206.

SUPREME COURT OF THE UNITED STATES.

No. 94.

JANE WATSON ET AL., PLAINTIFFS IN ERROR,

VERSUS

JOHN MERCER AND MARGARET MERCER.

IN ERROR TO SUPREME COURT OF PENNSYLVANIA FOR LANCASTER DISTRICT.

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In the court of common pleas of Lancaster county, of February term, 1805, No. 69, it is thus contained:

Ejectment.

Hopk. RICHARD FAIRPLAY, lessee of DAVID WATSON and SARAH his wife
69 *vs.*
Mongy., Smith. JOHN FOULPLAY, with notice to FRANCIS BAILY, JOHN MERCER, JOHN MESSINCOPE, and JOSEPH LEFEVRE.

Served (12 m.)
Montgomery & C. Smith appear, takes defence as to acres, pleads *non cul.*, and enter into the common rule.

Remd. by certiorari.

Recd. ret. to C. Court.

Copy of the circuit court docket to March term, 1805, No. 4.

Ejectment.

Hopkins. Cut. 4 — RICHARD FAIRPLAY, lessee of DAVID WATSON and SARAH his wife *vs.* JOHN FOULPLAY, with notice to FRANCIS BAILY, JOHN MERCER, JNO. MESSINCOPE, and JOSEPH LEFEVRE. Mongy., C. Smith v. fas. issd. v. fas. issd. Apl. 1806, May, 1807. — Enter into the common rule, *non cul.* issue and rule for trial December cont. March, 1806, cont. Sept. cont. Dec. cont. March, 1807, cont.

Nathaniel Watson, esq., tent. to defts. in $200, conditioned that, in case the pltff. in this case be cast, that he will pay the costs of suit.

Pltffs. bill filed with record. Cogr. Mar. 2, 1807.
Cor. me. W. Barton.

Jus. P. pltff.
WM. MCCAUSLAND, sen. — Appeal filed May 16th, 1807; records returned to the supreme court Oct. 20th, 1807.

Jany. 11th, 1809, record retd.

And now, May 13th, 1807, a jury being called, came, to wit: Jacob Brua, Benjn. Hostetter, David Martin, jr., Joseph Smedley, Michael Bender, Christian Becker, Jacob Haldeman, Christian Groff, Peter Forney, Christian Leib, Joseph Cassel, and John Grebill, who, being duly empannelled, returned, elected by ballot, chosen, sworn, and affirmed upon their respective affirmations, do say, that they find for the plaintiff, motion for a new trial, and overruled by the court. Appeal prayed, and granted judgment.

Sup. Court. And now, to wit, Dec. 31st, 1808, judgment affirmed.

Exr. habere facias possessionem and fi. fa. for costs to March term, 1809, No. 2.

Copy of the certificate of Clerk of Supreme Court filed.

In the Supreme Court of eastern district of Pennsylvania, of December, 1807.

Hopkins. No. 42 Montgy., C. Smith. — The lessee of DAVID WATSON and SARAH his wife *vs.* FRANCIS BAILY, JOHN MERCER, JOHN MESSENCOPE, and JOSEPH LEFEVRE. — Appeal from the circuit court of Lancaster county, filed 21st Oct. 1807. At a Supreme Court held at Philadelphia, in and for the eastern district of Pennsylvania, the 22d day of December, 1808, argued, and curia advstare vult.

Lancaster county, prothy. certif., &c. - - - -	$4 72
Alld. - - - - - - - - -	8 00
Crier - - - - - - - - -	20
	$12 92

And now, to wit, 31 Decr. 1808, judgment affirmed.
Supreme Court costs taxed at $12 92.

I, Joseph Reed, prothonotary of the Supreme Court of the eastern district of Pennsylvania, hereby certify that the foregoing contains a true copy

of the docket entries in the above cause as the same remain of *remain of* record in my office.

In witness whereof, I have hereunto set my hand, and affixed the [SEAL.] seal of said Supreme Court, at Philadelphia, this ninth day of January, in the year of our Lord one thousand eight hundred and nine.

JOS. REED, *Prothy.*

Copy of the narr. filed.

LANCASTER COUNTY, *ss.*

John Foulplay, late of the county of Lancaster aforesaid, yeoman, was attached to answer Richard Fairplay of a plea, wherefore, with force and arms, &c. he entered into one messuage, one barn, one garden, one orchard, one hundred and twenty acres of arable land, and ten acres of woodland, adjoining lands of George Ecker and Pequea creek, with the appurtenances lying and being in Strasburg township, in the county of Lancaster aforesaid; which David Watson and Sarah his wife demised to the said Richard for a term which is not yet expired, and ejected him from his said farm, and other wrongs to him did, to the great damage of the said Richard, and against the peace and dignity of the Commonwealth of Pennsylvania, &c. And whereupon the said Richard, by James Hopkins, his attorney, complains that, whereas the said David and Sarah, on the seventh day of December, in the year of our Lord one thousand eight hundred and four, had demised the tenements aforesaid, with the appurtenances, to have and to hold the said tenements, with the appurtenances, to the said Richard, and his assigns, from the sixth day of December, in the year aforesaid, to the end and term of twelve years from thence next following, and fully to be complete and ended, by virtue of which demise the said Richard entered into the said tenements with the appurtenances, and was thereof possessed; and the said Richard being so thereof possessed, the said John afterwards, that is to say, on the said seventh day of December, in the year last aforesaid, at the *the* county aforesaid, with force and arms, &c., entered into the said tenements, with the appurtenances, which the said David and Sarah demised to the said Richard in form aforesaid, for the term aforesaid, which is not yet expired, and ejected the said Richard out of his said farm, and other wrongs to him did, to the great damage of the said Richard, and against the peace of the Commonwealth of Pennsylvania, &c. Whereupon, the said Richard saith he is injured, and hath sustained damages to the value of fifty pounds lawful money of Pennsylvania. And whereupon, he brings the suit, &c.

JOHN DOE,
RICHARD ROE,
Pledges of Pros.

JAMES HOPKINS,
Atty. for Plaintiffs.

February 5, 1805.

GENTLEMEN: I am informed you are in possession of, or claim a title to, the premises in this declaration mentioned to some part thereof, and I being sued in this action as casual ejector, and having no claim or title to the said premises, do advise you to appear on the second Monday in February instant, in the county court of common pleas then to be holden at Lancaster, in and for the county of Lancaster, by some attorney of that court, and then there,

by a rule to be made of the said court, to cause yourself to be made defendant in my stead: otherwise, I shall suffer judgment to be entered against me, and you will be turned out of possession.

I am your humble servant,

JOHN FOULPLAY.

To FRANCIS BAILEY, JOHN MERCER, JOHN MESSINCOPE, and JOSEPH LEFEVRE, *tenants in possession of the premises in the above declaration mentioned, or of some part thereof.*

Endorsed on the narr.

69. Feby. term, 1805.

Lee of DAVID WATSON and wife,
vs.
JOHN FOULPLAY, with notice to FRANCIS BAILEY, JOHN MERCER, JOHN MESSINCOPE, and JOSEPH LEFEVRE.

Narr. in ejectment.

Served 12 miles: so answers,
JOHN REITZEL, *Sheriff.*

Original.

Copy of the reasons for appeal filed.

Lessee of DAVID WATSON and wife,
vs.
BAILEY and others.

Defendant moves for a new trial in this cause for the following reasons:

1. Defendant, to bar the claim of the plaintiffs, offered in evidence a deed from James Mercer and wife to —— Thompson, with the acknowledgment thereon, (in hæc verba,) which deed and acknowledgment the learned judge declared not to be sufficient in law to bar the claim of the pltffs. in this cause.

2. Defendts. offered to give in evidence declarations of the wife of James Mercer to the following effect: That she executed the said deed voluntarily, and if it was not sufficiently done, she would execute it, and acknowledge it over again, or do any other act to render the said deed valid and effectual; which evidence the learned judge declared to be inadmissible.

We do certify that we believe the reasons above stated are sufficient in point of law to procure a decision in favor of the defendants in this cause; and that a new trial ought to be granted, and the appeal is not made for the purpose of delay.

C. SMITH.
W. MONTGOMERY.

Endorsed on the foregoing:

4. March term, 1805.

DAVID WATSON & UX.
vs.
FRANCIS BAILY et al.

Appeal filed May 16, 1807.

Circuit Court, Lancaster, April 13th, 1807, Cor. Tilghman, C. J.

Bowie.
Hopk.
Hopk.
C. Smith.

Lessee of DAVID WATSON and SARAH his wife,
vs.
FRANCIS BAILEY and others.

Ejectment.

Hopkins. William McCausland.

There was John, Samuel, and Joseph Patterson. The girls were Marga-

ret and Sarah. The male branch extinct; unmarried. Margaret married James Mercer, who is dead without issue. Sarah married David Watson. Samuel Patterson Watson is her only child. The lands in dispute are part of the lands held by the Pattersons.

Montgomery. Defendants claim under Margaret Mercer.

May 30th, 1785, James Mercer and Margaret his wife conveyed to Nathan Thompson, same day Nathan Thompson conveyed to James Mercer.

Novr. 1786, No. 54. Mercer and Watson and wife. Judgment in partition.

August, 1787, No. 83.

Copy of certiorari.

PENNSYLVANIA, *Lancaster county, ss.*

[SEAL.] The Commonwealth of Pennsylvania to the judges of the court of common pleas for the county of Lancaster, greeting:

We being willing, for certain causes, to be certified of a plea of ejectment, wherein Richard Fairplay, lessee of David Watson and Sarah his wife, are plaintiffs, and John Foulplay, with notice to Francis Bailey, John Mercer, John Messencope, and Joseph Lefevre, are defendants before you, or some of you, depending, do command you that the plea aforesaid, with all things touching the same, before the justices of the circuit court for the county of Lancaster, or one or more of them, into the office of the clerk of the circuit court at Lancaster, for the said county, the third Monday of March next, so full and entire as in our court before you they remained, you certify and send, together with this writ, that we may farther cause to be done thereupon that which of right, and according to the laws of the State of Pennsylvania, ought. Witness the honorable Edward Shippen, esq., doctor of laws, Chief Justice of the Supreme Court of the State of Pennsylvania at Lancaster, the tenth day of December, in the year of our Lord one thousand eight hundred and four.

W. BARTON, *Cl. Cir. Cot.*

Allowed pr. J. Yeates.

Endorsed on the foregoing certiorari:

4. March term, 1805.

RICHARD FAIRPLAY, lessee of DAVID WATSON and SARAH his wife,
vs.
JOHN FOULPLAY, with notice to FRANCIS BAILEY, JOHN MERCER, JOHN MESSENKOPE, and JOSEPH LEFEVRE.

Certiorari.
Lancaster county, *ss.*

The plea within mentioned, with all things touching the same so full and entire as before us they remain in a certain schedule to this writ annexed, before the justices of the circuit court, the day and place therein contained. We certify and send as within we are commanded.

So answers,

ROBT. COLEMAN,
ANDREW GRAFF, } *Judges, &c.*

Copy of the habere facias possessionem.

LANCASTER COUNTY, *ss.*

[SEAL.] The Commonwealth of Pennsylvania to the sheriff of Lancaster county, greeting: Whereas Richard Fairplay, lessee of David Watson and Sarah his wife, lately in our circuit court for the county of Lancaster, before our justices thereof at Lancaster, by the judgment of the same court, recovered against John Foulplay, with notice to Francis Bailey, John Mercer, John Messencope, and Joseph Lefevre, late of your county, yeomen, their sum yet to come of and in one piece of land situate in Strasburg township, in the county of Lancaster aforesaid, containing one hundred and twenty acres of arable land, and ten acres of wood land, one messuage, one barn, one garden, and one orchard, which David Watson and Sarah his wife demised to the said Richard for a term of years, which is not yet expired, to have and to hold the pieces of land, with the appurtenances, unto the said Richard and his assigns, from the seventh day of December, in the year of our Lord MDCCCIV. to the end and term of twelve years from thence next following, and fully to be complete and ended; by virtue of which demise the said Richard entered into the said tenements with the appurtenances, and was thereof possessed; and the said Richard being so thereof possessed, the said John afterwards, that is to say, on the said seventh day of December, in the year last aforesaid, at the county aforesaid, with force and arms, &c. entered into the premises aforesaid, with the appurtenances so as aforesaid demised to the said Richard in manner aforesaid in and upon the possession of the said Richard thereof, and him from his lands and tenements aforesaid ejected, his said term therein not being ended, whereof the said Francis Bailey, John Mercer, John Messencope, and Joseph Lefevre, are convict. Wherefore, we command you, that, without delay, you cause the said David Watson and Sarah his wife to have their possession of their term aforesaid yet to come of and in the lands aforesaid, with the appurtenances. And we also command you that of the goods and chattels, lands and tenements, of the said Francis Bailey, John Mercer, John Messencope, and Joseph Lefevre, in your bailwick, you cause to be made and levied the sum of fifty-eight dollars and twenty-nine cents, which to the said David Watson and Sarah his wife in our same court, were adjudged for their damages which they sustained, as well by reason of the trespass and ejectment aforesaid, as for their costs and charges about their suit in that behalf expended, whereof the said Francis Bailey, John Mercer, John Messencope, and Joseph Lefevre, are convict. And have you those moneys before our justices of the circuit court aforesaid, or one or more of them, into the office of the clerk of the circuit court at Lancaster for the said county, the third Monday in March next, to render to the said David and Sarah for their costs and charges aforesaid; and in what manner you shall execute this our precept, do you make appear to our said judges, into the office of the clerk of the said circuit court, the third Monday in March next aforesaid, and have you there then this writ. Witness, the honorable William Tilghman, esquire, doctor of laws, Chief Justice of the Supreme Court of Pennsylvania, the second Monday in December, MDCCCVIII.

JOHN PASSMORE, *C. C. C.*

Endorsed on the habere facias possessionem:

1. March term, 1809.

RICHARD FAIRPLAY, lessee of DAVID WATSON and SARAH his wife,
vs.
JOHN FOULPLAY, with notice to FRANCIS BAILEY, JOHN MERCER, JOHN MESSENCOPE, and JOSEPH LEFEVER.

Habere facias possessionem and fi. fa. for costs - - $58 29
Incr. - - - 1 00

$59 29

Costs paid. So answers
EML. RUGART, *Shff.*
HOPKINS.

Copy of the execution docket entry.

RICHARD FAIRPLAY, lessee of DAVID WATSON and SARAH his wife,
2. *vs.*
JOHN FOULPLAY, with notice to FRANCIS BAILEY, JOHN MERCER, JOHN MESSENCOPE, and JOSEPH LEFEVER.

March 9th, 1809, recd. of sheriff thirty-seven dollars eighty-seven cents; pltffs. bill. Sup. Ct. costs paid by me, and attys. costs.

HOPKINS, *P. Q.*

Pltffs. bill - - - - - - -	$15 62
Supreme Court costs pd. by Mr. Hops. - - -	12 92
Clk. C. C. W. B. - - - - - -	12 56
Clk. C. Ct. J. P. - - - - - -	1 00
Atty. & ut. - - - - - -	5 00
Shff. - - - - - - -	70
Proth. com. pleas - - - - - -	4 00
Att. st. - - - - - - -	4 33
Shff. - - - - - - -	3 16
	$59 29

Habere facias possessionem and fi. fa. for costs. Isd. Jany. 11th.
HOPKINS.

Costs paid to Emanuel Reigart, sheriff J. Passmore rec'd one dollar.

STATE OF PENNSYLVANIA, *Lancaster county, ss.*

I, Christian Bachman, prothonotary of the court of common [SEAL.] pleas for said county, do certify that the foregoing contains a copy of the record of the suit wherein Richard Fairplay, lessee of David Watson and Sarah his wife, is plaintiffs, and John Foulplay, with notice to Francis Bailey, John Mercer, John Messencope, and Joseph Lefever, is defendant, and the proceeings therein had.

In testimony whereof, I have hereunto set my hand, and the seal of said court at Lancaster, this twenty-third day of November, in the year of our Lord 1832.

CHRISTN. BACHMAN, *Proth'y.*

In the court of common pleas of Lancaster, of August term, 1809. *No.* 1. (*It is thus contained:*)

Received $3 Isaac Ellsmaker's pay, as an arbtr. in the following action, Ma. Shirtz.

Hopkins. No. 1. C. Smith. Montgy.,	Lee. of DAVID WATSON and SARAH his wife, *vs.* JOHN MERCER, FRANCIS BAILEY, JOHN MESSENCOPE, and JOSEPH LEFEVER.	Caps. trespass, served on Bailey, Messencope, and Lefever, No. E. I, as to Mercer, 16 m. Death of Messencope suggested, Montgomery appears, &c.
Abs.,		$19
Witness,		9 50
Prot.,		7 03
Alls.,		4 33
Shff. rept.,		4 04
		43 90
Pl'iffs' bill,		3 75
		47 65

paid to J. P. by F. Bailey.

Nov. 22d, 1810, plaintiffs filed an application to have arbitrators chosen on the 10th day of December next. December 10th, 1810, plaintiffs appearing by their agent Samuel P. Watson and Francis Bailey, one of the defendants, in person, choose John Buyers, Isaac Ellmaker, Joseph Gest, jun'r., Benjamin Breckbill, jun'r., and John Slaymaker, jun'r., arbitrators, &c., to meet at the house of John Smoker, innkeeper in Strasburg township, on Thursday, the 3d day of Jan'y next, at 10 o'clock in the forenoon. June 6th, 1811, report filed, finding for plaintiff $600, with legal costs, tavern expenses to be equally borne by the parties; June 25th, 1811, Francis Bailey, one of the defendants, appeals, Francis Bailey appellant tent. in $1,200, Samuel White, of the borough of Lancaster, merchant, as special bail for appellant, cog. 25th June, 1811, taken according to law, cor. John Passmore prot. Appellant affirmed August 19th, 1811, motion to strike out the appeal, and leave to enter judgment against both defendants, (argued) Nov. 25, 1811, motion refused and appeal received. Defendant pleads non cul., issue, and rule for trial, Aug. 1811, continued, Nov. continued, Jan. 1812, continued, April continued, August continued, Nov. continued, Jan'y 13, continued. And now, March 2d, 1813, a jury being called, came, to wit, "Martin Meylin, David Witmer, John Brubaker, Jacob Brubaker, Christian Mussleman, Benjamin Deffenderfer, Jacob Rothfong, William Gamber, John Philips, Daniel Balmer, and George King, and G. Wanauer, twelve good and lawful men of the county of Lancaster, who, being duly empannelled, returned elected by ballot chosen, sworn or affirmed, upon their oaths and affirmations respectively do say that they find for the plaintiff £528 damages, and six cents costs. Judgment, writ of error issued to the Supreme Court. May 28th, 1814, on argument, the Supreme Court reverse the judgment of the court of common pleas

in this action, and award a venire facias de novo. November 29th, 1814, motion by C. Smith and W. Montgomery, esquires, to withdraw their appearance as to John Mercer, which was overruled by the court; at the same time motion to amend the pleadings granted by the court; whereupon the defendants severally plead not guilty, issue and rule for trial.

And now, November 29th, 1814, a jury being called, came, to wit: Joseph Bowman, Jacob Landis, Jacob Newswanger, Samuel Erb, John Newcomer, Jacob Breneman, Jacob Miller, Michael Greider, Christian Shenk, jun'r., Martin Meylin, John Eslebach, and Jonathan Fultz, twelve good and lawful men of the county of Lancaster, who, being duly empelled, returned elected by ballot chosen and affirmed, upon their solemn affirmations respectfully do say that they find for the plaintiff $1,200 damages and six cent costs. December 1st, 1814, rule to show cause why the verdict should not be set aside; October 6th, 1815, argued C. A. V. December 18th, 1815, on advisement overruled by the court, and judgment received January 1st, 1816, of John Passmore, prot., seven hundred and fifty-one dollars and fifty cents, the amount of the report of arbitrators filed June 6th, 1811, in favor of plaintiffs for six hundred dollars, together with interest thereon till the 21st day of August last, this sum being paid out of moneys paid into court by the sheriff at the suit of James Baxter vs. Francis Bailey, on an execution to November term, 1815. No. 7.

JAMES HOPKINS, *P. Q.*

Fi. fa. to January, 1816, No. 242.

I do hereby acknowledge to have received full satisfaction for the debt, interest, and plaintiffs' bill in this judgment. Therefore, release the same.

Witness my hand and seal, this 9th day of March, 1816.

SAML. P. WATSON, [SEAL.]

Attest: GEO. HECKERT.

(Copy of the execution docket entry, January 1816, *No.* 242.

Lessee of DAVID WATSON and SARAH his wife,
242 *vs.*
JOHN MERCER, FRANCIS BAILEY, and JOSEPH LEFEVER. } Orig. Aug. 1809, No. 1.

Damages, - - - - - -	$1,200	
Interest from the 29th of November, 1814, until the 21st of August, 1815 - - - - - - -	53	38
	1,253	38
Credit by money levied from sale of real estate of Francis Bailey	751	50
	501	80
Interest thence, till Dec. 18th, 1815, when judgment was rendered - - - - - - - -	10	03
Balance due,	511	83
Interest from Dec. 18, 1815.		
Proth's. Com. Pleas - - - - - - -	7	84
Do. Sup. Ct. and crier - - - - - -	6	85
Attorney - - - - - - - -	4	00

Shff H. R. - - - - - - - -	$2 20
Pltfs. bill and witnesses - - - - -	73 14
Do. paid juries - - - - -	8 00
Prot. increase - - - - - - -	1 00
	$103 03
Entering satisfaction	0 25

Fi. fa. isd. January 4th, 1816.

J. HOPKINS.

Satisfaction acknowledged on the original.

Copy of the precipe.

RICHARD FAIRPLAY, lessee of DAVID WATSON and SARAH his wife,
vs.
JOHN MERCER, FRANCIS BAILEY, JOHN MESSENCOPE, and JOSEPH LEFEVRE.

Issue capias to answer plaintiff in a plea wherefore, with force and arms, *the* broke and entered the close of the plaintiff situate in Strasburg township, Lancaster county, consisting of one messuage, one barn, one garden, one orchard, one hundred and twenty acres of arable land, and ten acres of woodland; and the said messuage, barn, garden, orchard, and land, converted to their own use for a long space of time, to wit: from the 1st of April, 1802, till the 1st day of January, 1809, to the plaintiffs' great damage, and against our peace, &c.

per J. HOPKINS, *P. Q.*

To JNO. PASSMORE, esq., *Prothon.*

Copy of the writ.

LANCASTER COUNTY, *ss.*

[SEAL.] The Commonwealth of Pennsylvania to the Sheriff of Lancaster county, greeting:

You are hereby commanded, that you take the bodies of John Mercer, Francis Bailey, John Messencope, and Joseph Lefever, so that you have them before our judges of the court of common pleas, to be holden for the said county at Lancaster, on the third Monday in August next; then to answer Richard Fairplay, lessee of David Watson and Sarah his wife, of a plea wherefore, with force and arms, they broke and entered the close of the said Richard, lessee of David and Sarah, as aforesaid, situate in Strasburg township, Lancaster county, consisting of one messuage, one barn, one garden, one orchard, one hundred and twenty acres of arable land, and ten acres of woodland; and the said messuage, barn, garden, orchard, and land, converted to their own use for a long space of time, to wit: from the first of April, 1802, till the first day of January, 1809, to the said Richard's great damage, and against our peace, &c. Hereof fail not. Witness John Joseph Henry, president of our said court, at Lancaster, the 17th day of April, one thousand eight hundred and nine.

JOHN PASSMORE, *Prot.*

Endorsed on the writ:

1. August term, 1809,	Caps. trespass, &c.
Richard Fairplay, lessee of David Watson and Sarah his wife,	Served on Francis Bailey, John Messencope, and Joseph Lefever,
vs.	
John Mercer, Francis Bailey, John Messencope, and Joseph Lefever.	John Mercer, N. E. J. 16 miles. So answers. EM. RUGART, *Shff.*

Hopkins.

Copy of the declaration.

Lancaster county, *ss.*

Of August term, 1809, *No.* 1.

John Mercer, Francis Bailey, John Messencope, and Joseph Lefever, were attached to answer Richard Fairplay, lessee of David Watson and Sarah his wife, in a plea wherefore, with force and arms, they broke and entered into one messuage, one barn, one garden, one orchard, one hundred and twenty acres of arable land, and ten acres of woodland, adjoining lands of George Ecker and Pequea creek, with the appurtenances, lying and being in Strasburg township, in the county of Lancaster aforesaid, of the said Richard Fairplay, and expelled and removed the said Richard from the possession and occupation of the said tenants; and the said Richard, so expelled and removed from his possession and occupation of the same tenements, kept and held out for a long time, and all that time took and received to his own use, the issue and profits of the same tenements of the yearly value of three hundred dollars, and did him, the said Richard, other injury, to his great damage and against our peace, &c. And whereupon said Richard, by James Hopkins, his attorney, complains of the said John Mercer, Francis Bailey, John Messencope, and Joseph Lefever, on the seventh day of December, in the year of our Lord one thousand eight hundred and four, with force and arms broke and entered into one messuage, one barn, one garden, one orchard, one hundred and twenty acres of arable land, and ten acres of woodland, with the appurtenances, adjoining lands of George Ecker and Pequea creek, lying and being in the township and county aforesaid: of the said Richard, and expelled and removed the said Richard, from the possession and occupation of the same tenements, and the said Richard, so expelled and removed from his possession and occupation of the same tenements, kept and held out for a long time, to wit, from the said seventh day of December, in the year of our Lord one thousand eight hundred and four, until the first day of April, in the year of our Lord one thousand eight hundred and nine, and for all that time took, and received to his own use, all the issues and profits of the same tenements of the yearly value of three hundred dollars, and other injuries to him did, to his great damage: wherefore, he saith that he is damnified to the value of fifteen hundred dollars, and therefore he brings his suit, &c.

JOHN DOE,
RICHARD ROE, } *Pledges.*

Endorsed on the foregoing declaration:

Of August term, 1809, No. 1.

Lessee of DAVID WATSON et ux., *vs.* JOHN MERCER, FRANCIS BAILEY, JOHN MESSENCOPE, and JOSEPH LEFEVER,	Trespass narr. The defendants plead non cul., &c.

Copy of the application to arbitrate.

In the court of common pleas of Lancaster county.

Lee. of DAVID WATSON, and SARAH his wife, *vs.* JOHN MERCER, FRANCIS BAILEY, JOHN MESSENCOPE, and JOSEPH LEFEVER.	Of the term of August term, 1809, No. 1. Action of trespass vi et armis.

I desire you to enter a rule of reference in this action, as it is my determination to have arbitrators chosen on Monday, the 10th day of December next, between the hours of 11 and 12 o'clock in the forenoon, for the trial of all matters in variance between the parties in this suit.

Witness my hand, this 22d day of November, 1810.

SAML P. WATSON.

To the PROTHONOTARY *of Lancaster county.*

Endorsed on the foregoing application.

1. August, 1809.

WATSON, *vs.* MERCER ET AL } Application to refer Dec. 10th, 11, and 12 o'clock.

Dec. 10th, 1810. The parties appearing, viz. Watson and Bailey agree that the No. of arbitrators be 5.

Pltff.	names	John Barkman,	objected.
do.	do.	John Lighton, jr.,	objected.
do.	do.	Nathaniel Ellmaker,	objected.
do.	do.	Nathaniel Lightner, senr.,	objected.
do.	do.	John Byers,	agreed.
do.	do.	John Hopkins, esq.,	objected.
do.	do.	David Witmer, senr.,	objected.
do.	do.	Andrew Caldwell,	objected.
do.	do.	Isaac Eby, sen., Leacock,	objected.
do.	do.	Isaac Ellmaker,	agreed.
Deft.	do.	James Tremble,	objected.
do.	do.	James Houston,	objected.
do.	do.	Emanuel Rugart,	objected.
do.	do.	Samuel Slaymaker,	objected.
do.	do.	John Guest, jun.,	agreed.
do.	do.	Doct. Arthur May,	objected.
do.	do.	John Jordon,	objected.
Defdt.	do.	Benjamin Breckbill, jr.	agreed.

Pltff.	names	Benjamin Vernon,	objected.
Defdt.	do.	David R. Barton,	objected.
Pltff.	do.	John McCully,	objected.
Defdt.	do.	James Crawford,	objected.
Pltff.	do.	Gen. James Whitehill,	objected.
Defdt.	do.	Henry Breckbill,	objected.
Pltff.	do.	Robert McIlvane, jr.	objected.
Prot	do.	John Slaymaker, jr.	agreed.

To meet at the house of John Smoker, in Strasburg township, by agreement of the parties, on Tuesday the 3d day of January next, at 10 o'clock A. M.

Copy of the rule of reference.

In the court of common pleas of Lancaster county:

Lee. of DAVID WATSON, and SARAH his wife, *vs.* JOHN MERCER, FRANCIS BAILEY, JOHN MESSENCOPE, and JOSEPH LEFEVER. } Of the term of August, 1809, No. 1. Action of trespass vi et armis for mesne profits.

Death John Messencope suggested.

Agreeably to an act of ssembly, entitled "An act regulating arbitrations," passed the 19th day of March, 1810, all matters in variance between the parties in this action, and referred to John Byers, Isaac Ellmaker, Joseph Guest, junr., Benjamin Breckbill, junr., and John Slaymaker, junr., arbitrators chosen by the parties, who are to meet at the house of John Smoker, innkeeper, in the township of Strasburg, in said county, on Tuesday the 3d day of January next, at 10 o'clock in the forenoon of said day; and they, or a majority of them, (or such other persons as may be substituted, in pursuance of said act, are to make report of their determination into the Prothonotary's office at Lancaster, within seven days after they shall have agreed upon the same.

Attest: JOHN PASSMORE, *Proths.*

PROTHONOTARY'S OFFICE, LANCASTER.

Dec. 10th, 1810.

We, the sw. arbitrators named in the above order, do report that we have a heard the proofs and allegations of the parties, and duly considered the same, and do award that the defendants pay the plaintiff the sum of six hundred dollars, with legal costs; tavern expenses to be equally borne by the parties. Witness our hands and seals, this fourth day of June, A. D. 1811.

JOHN BYERS. [SEAL]
ISAAC ELLMAKER. [SEAL.]
JOSEPH GEST, Jr. [SEAL.]
BENJ. BRECKBILE, Jr. [SEAL.]
JNO SLAYMAKER, Jr. [SEAL.]

Witnesses' attendance.

Jacob Harris, days	3
James Dunlop,	3
David Trout,	4
Joseph Lefever,	2
Geo. Eckert, esq.	3
John Yoder,	1
Dnla. McFadden,	3

Arbitrators' allowance.

John Byers, days	4
Isaac Ellmaker,	3
Joseph Gest, jr.	4
Benj. Breckbile, jr.	4
Jno. Slaymaker, jr.	4

Endorsed on the rule of reference.

1. August, 1809.

WATSON, *vs.* MERCER and others } Rule of Reference.

The arbitrators will please to unite their report on this paper. Report filed June 6th, 1811.

June 25th 1811. I appeal from the within award of the arbitrators.

FRANCIS BAILEY.

Lessee of DAVID WATSON, and SARAH his wife, *vs.* JOHN MERCER, FRANCIS BAILEY, JOHN MESSENCOPE, and JOSEPH LEFEVER. } Action of trespass for mesne profits, &c., in the Common Pleas of Lancaster county, to August term, 1809, No. 1.

Death of John Messencope suggested.

Referred to arbitrators, and June 6th, 1811; report filed in the Prothonotary's office. Francis Bailey, one of the defendants above named, appeals from the award of the arbitrators above mentioned, June 25th, 1811.

LANCASTER COUNTY, *ss.*

Francis Bailey, being duly affirmed according to law, says that he does not enter the appeal aforesaid for the purpose of delay, but because he firmly believes that injustice has been done by the award of the arbitrators.

FRANCIS BAILEY,

Affirmed and subscribed. June 25th, 1811. Coram me.

JOHN PASSMORE, *Prot.*

Francis Bailey, tent. in $1,200, Samuel White, of the borough of Lancaster, merchant, tent. in $1,200, as special bail for the said Francis Bailey.

To the plaintiffs above named, upon condition that, if the plaintiff in the event of the suit shall recover a judgment for a sum equal to or greater than the report of the arbitrators, the said defendant shall pay all costs that may accrue in consequence of this appeal, together with the sum awarded by the arbitrators, with one dollar per day for each and every day that shall be lost by the plaintiffs in attending to the said appeal; or, in default thereof, shall surrender the said defendant to the jail of the county of Lancaster, in discharge of this recognizance.

Taken June 25, 1811. Coram me.

JOHN PASSMORE, *Prot.*

Copy of the notes of testimony.

Hopkins. Lessee of DAVID WATSON and wife, *vs.* JOHN MERCER, FRANCIS BAILEY, JOHN MESSENCOPE, and JOSEPH LEFEVRE. } Aug., 1809, No. 1, trespass for mesne profits, dft. pleads non cul. Issue and rule for trial.

March 2d, John Messencope's death suggested.

Clerk reads declaration.

Mr. Hopkins opens for plaintiff—property held from December, 1804, until spring of 1809, 120 acres, in the township of Strasburg.

Reads record of original suit brought in common pleas, and removes into circuit court, March t., 1805, No. 4. Richard Fairplay, lessee of Watson and wife, *vs.* Foulplay, with notice to Mercer, Bailey, Messencope, and Lefevre. Ejectment, 13th May, 1807. Trial and verdict for pltff., motion for new trial overruled, Decr. 31, 1808. Judgment affirmed, entry and ouster laid 7th Decr. 1804. Possession delivered in July, 1809.

George Eckert, esquire, swn. Watson moved to it in the winter of 1809, 1808–9, after new years'. I am well acquainted with the land. I have land adjoining. From 1804 to 1809, it might be worth £100, or $300 a year. I make this calculation, *supposing* tenant to make necessary repairs, and exclusive of taxes—I mean to keep it in repair. I dont include repairs to the buildings. John Mercer lived there in his father's lifetime, and until the day before Watson took possession. Francis Bailey and Joseph Lefevre never lived on the place to my knowledge. There was a crop in the ground when Mercer moved away, can't say how much; I think Watson reaped it. I do not recollect how many fields had grain. I remember one field of rye, 6 or 7 acres. Never heard Watson mention the quantity. I never knew the place a year without grain in it. It was always regularly farmed.

George Eckert, sw. I adjoin this tract. I reckon it would be worth about £100 a year, keeping the fences in repair, landlord to pay the taxes. I am well acquainted with the land. I have lived alongside of it for 30 years. My son George has lived there all along, too. John Mercer lived on the place from 1804 to 1809. Neither Francis Bailey nor Joseph Lefever ever lived on the land. There was 6 or 8 acres of rye when Watson took possession; some other, but I don't remember it right; perhaps some wheat. I believe Watson got that crop. It was farmed every year.

Daniel McFadden, sw. I live adjoining the land. Watson got possession, I think to the beginning of Feby., 1809. Worth at a fair rent, between 1804 to 1809, perhaps $300 a year, tenant to keep the fences in order, nothing else; owner to pay the taxes. I have lived adjoining 8 years; but I knew the place before. I dont recollect what quantity of grain was in. Mercer sd he would not have taken $300. It was put in 3 different fields, part of fields only. Neither Mr. Bailey nor Mr. Lefever ever had possession of it.

John Yoder, sw. I was raised within a mile and a half of this place. From 1804 to 1809, a fair rent would be about $300; tenant leave the fences in the same repair he got them in, owner to pay the taxes. I dont recollect what crop was in it when Watson took possession. I knew there was a crop. I never knew it any year without being farmed.

Isaac Vanleer, sw. I know this property. I lived alongside of it from the spring of 1804 till the spring of 1808. Fair rent from 1804 to 1809, would be £100, tenant to leave as he got it; tenant to pay the taxes.

James Dunlap, sw. I know this place. I pd. $300 for one of same *size*, no better. I lived there at the same time. Mercer lived on this farm from 1804 to 1809. I drew 500 rails a year from the compass 9 miles, to keep the fence in repair. The landlord paid the taxes. I cannot tell the number of acres Mercer had grain in when Watson took possession; not more than 15 acres; not a whole field. It was farmed every year.

George Eckert, esq., again called by deft. Never knew Mr. Watson to be in possession until he got possession from Mr. Mercer. None of the Watsons were in possession to my knowledge, before the recovery of possession

Danl. McFadden again for pltff. John Mercer told me he rented from Mr. Bailey. He told me he paid Mr. Bailey the rent.

The above copy of the notes of testimony, taken by me on the trial, is filed at the request of defendant's counsel.

WALTER FRANKLIN.

Copy of the notes of charge.

WATSON and Wife, *vs.* MERCER and others. } Notes of charge.

It appears in this case that an ejectment was brought by the lessee of David Watson and wife against Richard *Playfoul*, to recover one hundred and twenty acres of land in the township of Strasburg, in this county; that notice was given by the casual ejector to John Mercer, Francis Bailey, John Messencope, Joseph Lefevre, that a trial took place, judgment was rendered in favor of the pltffs. for the whole quantity of land claimed, and possession was afterwards obtained by them. The present suit is instituted to recover the profits alleged to have been received by the defendants during the time they held this land in opposition to the right of the pltffs. To entitle the plaintiffs to recover in this action, it is necessary for them to prove the value of the land, and the occupation of it by the defendants. With respect to John Mercer, he is proved by witnesses to have been in possession of the land, and evidence has also been given to you that John Mercer paid rent to Francis Bailey.

As to Joseph Lefevre, there is no proof of his ever having been in possession of the land, or receiving any of the *profits* therefrom, except that which is founded upon the proceedings in the ejectment.

An ejectment, in order to entitle a *to entitle a* plaintiff to obtain a verdict, it is absolutely necessary that he should prove that the party from whom he claims the land was in possession of it at the time the suit was commenced. A judgment in ejectment, therefore, is conclusive evidence that the person against whom the recovery was had was in possession at the time of the service of the declaration.

If, then, Joseph Lefevre were a party defendant not in the ejectment brought by the present plaintiffs, there would be no difficulty in the proof of his having been in the possession of the property at the time the ejectment was commenced.

The suit was instituted by the lessee of the plaintiffs against Richard Playfoul, with notice to John Mercer, Francis Bailey, John Messencope, and Joseph Lefevre. Mr. Montgomery and Mr. Smith appear, take defence, enter into the common rule, and plead not guilty. But it does not appear that the name of the casual ejector was stricken out of the declaration, and the names of Mercer, Messencope, Bailey, and Lefevre, substituted. Notwithstanding this omission, I think it is manifest from all the proceedings, that the verdict was not against the casual ejector, but against the persons for whom Mr. Smith and Mr Montgomery appeared, and those were the defendants in the present suit. The question of title was discussed, and the

cause was tried on its merits. The principle just laid down, therefore, applies, in my opinion, to this case. You are judges of the amount which ought to be received by the pltffs., and your determination must depend upon the evidence given. There is no rule which compels you to unite all the defendants in the same decision, and you have a right to separate them in your verdict, if you think the evidence will warrant you in so doing.

Filed at the request of defendants' counsel.

WALTER FRANKLIN.

Copy of the errors assigned.

WATSON and Wife, *vs.* MERCER, BAILEY, and LEFEVER. } Errors assigned.

1. The judge erred in directing the jury that the verdict and judgment were conclusive evidence that Joseph Lefever was in possession of the premises at the time the suit was commenced, and it appears by the evidence requested to be filed, that it was expressly proved he never had been in possession.

2 That it does not appear by the record that Joseph Lefever was a party to the record, or that any defence or appearance was entered for him. The judge therefore erred in his opinion delivered on this point.

3 If Joseph Lefevre had been made a party, yet it was necessary to prove when he became a party, and how long he held possession; but there being no such proof, the judge erred in directing the jury that the verdict and judgment were conclusive evidence of his having been in possession, and there is manifest error in the judgment rendered for the damages, which go to the whole time laid in the declaration, and before the appearance and entry into the common rule.

4. That if the said verdict and judgment were evidence of Joseph Lefevre having been in possession at the time of the service of the writ, yet it was no evidence of such possession having been continued, and the judge should have directed the jury that, as there was no evidence of the continuance of the possession, *the* ought to find nominal damages only.

C. SMITH,
W. MONTGOMERY, for
John Mercer, Francis Bailey, Joseph Lefever.

Copy of the fi. fa. to January, 1816, *No.* 242.

LANCASTER COUNTY, *ss.*

[SEAL.] The Commonwealth of Pennsylvania to the sheriff of Lancaster county, greeting: We command you, that, of the goods and chattels, lands and tenements of John Mercer, Francis Bailey, and Joseph Lefevre, in your bailiwick, you cause to be made and levied, as well the sum of twelve hundred dollars, which the lessee of David Watson and Sarah his wife, lately in our county court of common pleas, before our judges thereof at Lancaster, recovered against them for their damages, which they sustained by occasion of a certain promise and assumption by the aforesaid John, Francis, and Joseph, made and not performed, as one hundred and two dollars and three cents, which to the said lessee of David Watson and wife, in our same court, were adjudged for their costs and charges by them about their suit in that behalf expended, whereof the said

John, Francis, and Joseph, are convict; and have you those moneys before our judges at Lancaster, at our county court of common pleas, there to be held on the third Monday in January next, to render to the said lessee of David Watson and wife for their damages and costs and charges aforesaid: and have you then there this writ. Witness, the honorable Walter Franklin, esq., president of the said court at Lancaster, the twenty-third day of December, in the year of our Lord one thousand eight hundred and fifteen

JOHN PASSMORE, *Prot.*

Endorsed on the foregoing fi. fa.:

242. January term, 1816.

Lessee of DAVID WATSON and SARAH his wife,
vs.
JOHN MERCER, FRANCIS BAILEY, and JOSEPH LEFEVRE.

Original, Aug., 1809, No. 1.

Damages - - - - - - - -	$1,200 00
Int. fr. 29th Nov., 1814, until the 21st Aug., 1815 -	53 38
	$1,253 38
Credit by money levied from sale of real estate of Francis Bailey	751 50
	$501 80
Int. thence till Dec. 18th, 1815, when judgment was rendered	10 03
Balance due - -	$591 85

Int. from Dec. 18th, 1815.

Prothy. com. pleas - - - - - -	$7 84
Do. Supreme Ct. - - - - - - -	6 65
Cryer - - - - - - - -	20
Attorney - - - - - - - -	4 00
Shff. H. R. - - - - - - -	2 20
Pltffs. bill and witnesses - - - - - -	73 14
Do. paid juries - - - - - - -	8 00
Proths. increase - - - - - - -	1 00
	$103 03

Levy the personal property of the defts. J. HOPKINS.

Levied on *on* defendants' personal property. So answers
GEORGE HAMBRIGHT, *Sheriff.*

Debt, interest, and cost, paid in full. So answers
GEORGE HAMBRIGHT, *Sheriff.*

Copy of Plt'ffs'. Attorney's calculation.

WATSON,
vs.
BAILEY, MERCER, and LEFEVER.

Value for year 1805 - - - - -		£100	0 0
Interest from 1st April, 1806, until Nov. 30th, 1814 -		45	9 0
Value for 1806 - - - -	£100 0 0		
Interest from 1st April, 1807, until 30th Nov., 1814	39 9 0		
		139	9 0
Value for 1807 - - - -	100 0 0		
Interest from 1st April, 1808, till 30th Nov., 1814	33 9 0		
		133	9 0
Value for 1808 - - - -	100 0 0		
Interest from 1st April, 1809, till Nov. 30th, 1814	27 9 0		
		127	9 0
		£545	16 0

Endorsed on the foregoing calculation:

1. August, 1809.

Plt'ffs atty's calculation filed December 1st, 1814, by direction of Mr. Montgy.

Copy of the decree of the Supreme Court.

In the Lancaster district of the Supreme Court for the Commonwealth of Pennsylvania, of May term, 1813, No. 8.

JOHN MERCER, FRANCIS BAILEY, and JOSEPH LEFEVER, plaintiffs in error,
vs.
The Lessee of DAVID WATSON and Wife, defendants in error.

Writ of error to the court of common pleas of Lancaster county.

[SEAL.] And now, May 28th, 1814, at a Supreme Court held at Lancaster for said district, before the honorable William Tilghman, chief justice, and Jasper Yeates, and H. H. Brackenridge, esquires, assistant justices of said court: On argument, the court reverse the judgment of the court of common pleas of Lancaster county in this action, and award a venire facias de novo.

Attest, JOHN PASSMORE, *Prot.*

Copy of the precipe for writ of error.

RICHARD FAIRPLAY, lessee of DAVID WATSON and Wife,
vs.
JOHN MERCER, FRANCIS BAILEY, and JOSEPH LEFEVER.

In the common pleas of Lancaster county.
Action for mesne profits.

Issue writ of error to remove all proceedings in this cause.

W. MONTGOMERY.
C. SMITH.

JOHN PASSMORE, esq.

Came before me, the president of the courts of common pleas, &c. of the second judicial district of the Commonwealth of Pennsylvania, Joseph Lefevre, one of the defendants above named, who, being duly sworn, saith that the abovementioned writ of error is not taken for the purpose of delay.

JOSEPH LEFEVRE.

Sworn and subscribed this 19th of March, 1813, before me, in open court.

WALTER FRANKLIN.

Filed March 19th, 1813.

Copy of the recognizance.

JOHN MERCER, FRANCIS BAILEY, and JOSEPH LEFEVRE, pltffs. in error, *vs.* The lessee of DAVID WATSON and Wife, defdts. in error. } Writ of error to the common pleas of Lancaster county to May, 1813. No.

We acknowledge to owe and be indebted to the lessee of David Watson and wife, defendants in error, in the sum of three thousand dollars, of our goods and chattels, lands and tenements, jointly and severally to be made and levied to the use of the said lessee of David Watson and wife, their executors, administrators, and assigns, if default be made, in the following condition:

Whereas the said John Mercer, Francis Bailey, and Joseph Lefevre, have prosecuted a writ of error from the Lancaster district of the Supreme Court to the judges of the court of common pleas of Lancaster county, directed on a judgment obtained against the said John Mercer, Francis Bailey, and Joseph Lefevre, at the suit of the said lessee of David Watson and wife. Now, the condition of this recognizance is such, that, if the said John Mercer, Francis Bailey, and Joseph Lefever, shall prosecute the said writ of error with effect, and, in case the said judgment shall be affirmed, shall pay the damages and costs in the former judgment affirmed, and also damages and costs to be awarded for delay of execution, then this recognizance to be void, otherwise of force.

JOSEPH LEFEVER.
JOHN JORDON.
ADM. REIGART, *jr.*

Taken and acknowledged the nineteenth day of March, 1813, before

WALTER FRANKLIN.

Endorsed on the recognizance:

8. May term, 1813.

JAMES MERCER, FRANCIS BAILEY, and JOSEPH LEFEVER, pltffs. in error, *vs.* The lessee of DAVID WATSON and Wife, defdts. in error. } Recognizance.

Copy of writ of error.

PENNSYLVANIA, *sc.*

The Commonwealth of Pennsylvania to the judges of the court
[SEAL.] of common pleas for the county of Lancaster, greeting: Because, in the record and process, and in rendering the judgment in a certain plaint, which was in our said court before the judges of the same court by our writ, between the lessee of David Watson and wife, plaintiffs, and John Mercer, Francis Bailey, and Joseph Lefever, defendants, as it is said manifest error hath intervened to the great damage of the said John Mercer, Francis Bailey, and Joseph Lefever, as by the complaint of the same John Mercer, Francis Bailey, and Joseph Lefever, we have received information: We, willing that if any error be therein, it should be corrected, and that speedy justice be done to the parties in this suit, do command you, that if judgment, as it is said, be rendered in the said plea, then the record and process, and all things touching the same under your seal, distinctly and openly, you have before the judges of our Supreme Court, at a Supreme Court to be held at Lancaster, in and for the Lancaster district of said Commonwealth, on the third Monday of May next, and this writ, that the record and process aforesaid being impeded, we may further cause to be done what of right, and according to our laws and customs ought.

Witness the honorable William Tilghman, esquire, Chief Justice of our said Supreme Court at Lancaster, the thirtieth ———, in the year of our Lord one thousand eight hundred and twelve, and of the Commonwealth the thirty-sixth.

JOHN PASSMORE,
Prothonotary of the Lancaster district.

Allowed by J. YEATES.

Endorsed on the writ of error:

JOHN MERCER, FRANCIS BAILEY, and JOSEPH LEFEVER, pltffs. in error, *vs.* The lessee of DAVID WATSON and Wife, defdts. in error.	Writ of error to the court of common pleas of Lancaster county, Montgy. and C. Smith for pltffs. in error.

To the honorable the judges within named, we, the judges of the court of common pleas within mentioned, do certify and send the plea within mentioned, with all things touching the same, so full and entire as before us they remain in a certain schedule to this writ annexed. So answers,

WALTER FRANKLIN.
JACOB HEBSHMAN.

STATE OF PENNSYLVANIA, *Lancaster county, ss.*

I, Christian Bachman, prothonotary of the court of common
[SEAL.] pleas for said county, do certify that the foregoing contains a correct copy of the record of a suit wherein the lessee of David Watson and wife are plaintiffs, and John Mercer, Francis Bailey, John Messencope, and Joseph Lefever, were originally defendants, with the proceedings therein had.

In testimony whereof, I have hereunto set my hand, and the seal of said court, at Lancaster, this twenty-fourth day of November, in the year of our Lord one thousand eight hundred and thirty two.

CHRIST. BACHMAN, *Prothy.*

In the court of common pleas of Lancaster county of January term, 1818, No. 54, it is thus contained:

Copy of the docket entry.

Rogers. Hopkins. Ut. due.	JOHN MERCER and MARGARET MERCER, *vs.* SAMUEL WATSON. precipe filed.	Sums. in ejectment, isd. December 2d, 1817, 13 m. served by copy. April 27th, 1818, defendant pleads not guilty. Issue and rule for trial.

Prot. pass.	-	-	-	-	-	-	-	$2 39
Testes. for pl'tffs. Joseph Lefevre sw'n. Bill of exceptions filed.								
Prot. Porter.	-	-	-	-	-	-	-	$6 87
Prot. M.	-	-	-	-	-	-	-	2 25

Continued from term to term until August term, 1818, and now October 7th, 1818, at an adjourned court, a jury being called, came, to wit: Isaac Hubley, Abraham Hoober, John Henderson, Casper Snyder, William Ewing, Jacob Haines, John Kendal, George Werntz, David Brady, Christian Herr, John Graybill, and John Wolf, twelve good and lawful men, of the county of Lancaster, who, being duly empannelled, returned, elected by ballot, chosen, sworn, or affirmed, upon their oaths and affirmations respectively do say that they find for the plaintiffs, with six cents damages and six cents costs. October 8th, 1818, on motion of Mr. Hopkins, and reasons for a new trial filed: rule to show cause why a new trial should not be granted. 26th April, 1819, motion withdrawn and judgment for the plaintiff. Copy of the president's notes of the testimony and admissions, the points upon which the court were requested to charge the jury, and the charge of the court filed of record October 9th, 1818, and annexed to the bill of exceptions, April 26th, 1819. On motion of Mr. Hopkins the court appoint John Cooper, of Leacock township, guardian ad litem in this suit, the defendant being now dead.

Writ of error to remove the proceedings to the Supreme Court, to May term, 1819. Judgment of the court of common pleas reversed by the Supreme Court, (see decree filed Decem'r 6th, 1826.) March 3, 1823, plaintiffs suffer a nonsuit.

Copy of the precipe.

JOHN MERCER and MARGARET MERCER,
vs.
SAMUEL WATSON.

Issue summons in ejectment, that Samuel Watson appear before the judges of the court of common pleas in and for the county of Lancaster, to be holden *of* Lancaster, on Monday the day of next, then and there to answer to a certain complaint made by John Mercer and Margaret Mercer, that he, the said Samuel Watson, now hath in his actual possession a tract of land situate in Strasburg township, in the said county, containing forty-one acres and a half or thereabouts, beginning *a* white oak, a corner of

George Acond's land; thence, by the same, east, one hundred and six perches, to a post; thence, south fifteen perches to a post; thence, by lands of the heirs of Joseph Patterson, deceased, west one hundred and twenty-four perches, to a post; thence, by the same north, one hundred and ten perches, to a post; thence, by the same west, five perches, to a post; thence, by the same, north, one hundred and thirty-five and a half perches, to Pequea creek; thence, up said creek, twenty-three perches and five links, to a post; thence, by lands of George Accond aforesaid, south, two hundred and twenty-eight perches, to the beginning; the right of possession or title to which they, the said John Mercer and Margaret Mercer, say is in them, and not in the said Samuel Watson, all which they aver they are prepared to prove before the said court.

MOLTON C. ROGERS,
Att'y for Plaintiff.

JOHN PASSMORE, esquire.

Filed November 29, 1817.

Copy of the writ.

LANCASTER COUNTY, *ss.*

[SEAL.] The Commonwealth of Pennsylvania to the sheriff of Lancaster county, greeting:

You are hereby commanded that you summon Samuel Watson to be and appear before the judges of the court of common pleas in and for said county, to be holden at Lancaster, on the third Monday in January next, then and there to answer to a certain complaint made by John Mercer and Margaret Mercer, that he, the said Samuel Watson, now hath in his actual possession a tract of land situate in Strasburg township, Lancaster county, containing forty-one acres and a half, or thereabouts: beginning at a white oak, a corner of George Accond's land; thence, by the same east, one hundred and sixty perches, to a post; thence, south fifteen perches, to a post; thence, by lands of the heirs of Joseph Patterson, deceased, west, one hundred and twenty-four perches, to a post; thence, by the same, north one hundred and ten perches, to a post; thence, by the same west, five perches, to a post; thence, by the same north, one hundred and thirty-five and a half perches, to Pequea creek; thence, up said creek twenty-three perches and five links, to a post; thence, by land of George Accond aforesaid, south two hundred and twenty eight perches, to the place of beginning—the right of possession or title to which they, the said John Mercer and Margaret Mercer, *saith* is in them, and not in the said Samuel Watson. All which they, the said John Mercer and Margaret Mercer, *avereth* they are prepared to prove before our said court—hereof fail not. Witness, the honorable Walter Franklin, esq'r, president of our said court at Lancaster, twenty-ninth day of November, in the year of our Lord one thousand eight hundred and seventeen.

JOHN PASSMORE, *Prot.*

Endorsed on the foregoing writ:

54. January term, 1818.

JOHN MERCER and MARGARET MERCER, *vs.* SAMUEL WATSON. } Sums. in ejectment.

13 miles—served by copy. So answers,

GEORGE HAMBRIGHT, *Sheriff.*

Copy of agreement of attorneys.

JOHN MERCER and MARGARET MERCER, *vs.* SAMUEL WATSON. } In the common pleas of Lancaster county, of January term, 1818, No. 54.

It is admitted in this case that James Mercer died, leaving, by Sarah his first wife, five children, to wit: Samuel, Alexander, John, William and Margaret. Before the commencement of the above suit it is also admitted that Samuel, Alexander, and William, were deceased. Samuel and Alexander left issue, and William died intestate, unmarried, and without issue. It is also admitted that the plaintiffs in this cause are two of the children of the said James Mercer, and Sarah his wife.

JAMES BUCHANAN,
Att'y for Pl't'ffs.
JAMES HOPKINS, *P. D.*

Filed October 7th, 1818.

Copy of the reasons for a new trial.

JOHN MERCER and MARGARET MERCER, *vs.* SAMUEL WATSON. } In the common pleas of Lancaster county.

Motion for a new trial.

1st. Because the verdict is contrary both to the evidence and the law.

Samuel Watson, being duly sworn according to law, saith that the matters stated for the above motion are true, as he verily believes, and further saith not.

SAMUEL P. WATSON.

Sworn in open court, October 8th, 1818.
Test:

WM. A. RIGG, for
G. B. PORTER, *Proth'y.*

Filed October 8th, 1818.

Copy of bill of exceptions.

JOHN MERCER and MARGARET MERCER, *vs.* SAMUEL WATSON. } In the common pleas of Lancaster county.

The cause being at issue, and the jury sworn, prout the record, the plaintiffs gave in evidence to support the issue taken on his part, the admissions, testimony, and evidence contained upon the judge's notes, prout the admissions, testimony, and the two deeds thereon, all of which are hereunto annexed, and to be taken as part of this bill, prout the same, and then rested; whereupon, the defendant, to maintain the issue upon his part, gave in evidence the record of *a* recovery in ejectment in the circuit court of Lancaster county, brought by the ancestors of the present defendant, whose sole heir he is, against Thomas Bailey, John Mercer, John Messencope, and Joseph Lefever, who were nominated and appointed executors of the last will and testament of James Mercer, the grantor in one, and the grantee in the other of the deeds given in evidence on the part of the plaintiff, and an appeal from the judgment so rendered in the said circuit court to the supreme

court of Pennsylvania, and the judgment of the said circuit court affirmed in the said supreme court, prout the records in the said circuit and supreme courts, hereunto annexed, prout the same, and also the habere facias possessionem issued thereon, prout the same; and also proved that the defendant was the sole heir at law of the lessors of the plaintiff in that ejectment. The defendant also gave in evidence the will of James Mercer, dated the 2d of November, 1803, prout the same; and afterwards the plaintiff gave in testimony the renunciation of Joseph Lefever, dated the 6th of December, 1804, prout the same, the renunciation of John Messincope, dated the 8th December, 1804, prout the same, and the certificate of the letters testamentary granted to John Mercer and Francis Bailey, prout the same; and, also, the testimony of Joseph Lefever, prout the judge's notes. The defendant also stated three specific propositions to the honorable court, prout the same hereunto annexed, and to be taken as part of this his bill of exceptions, and prayed the honorable court to give the said propositions in charge to the jury in support of the defendant's defence, whereupon the honorable court gave the following charge to the jury, prout the same hereunto annexed, which is to be taken as part of this bill of exceptions, and to which opinion the defendant did then and there except. The defendant, after the said charge was given to the jury, proposed to deliver to the jury the first volume of Binney's Reports, containing the decision of the Supreme Court delivered in favor of the plaintiff, on the record so as aforesaid removed to the said Supreme Court, on which one of the questions arising in this cause on the acknowledgment of the said deed of James Mercer and Margaret his wife, to Nathan Thompson, had been decided by the said Supreme Court, prout the decision contained in the first volume of Binney's Reports, page 470 to page 480, prout the said report of the decision which was objected to and overruled by the court, and not allowed to be delivered to the jury. To which said several opinions of the honorable court on all the said matters the defendant did then and there except, and pray the honorable court to allow this his exception, and affix their seal to this his bill; which was done accordingly, (the addition in the margin of the first page being first made.)

WALTER FRANKLIN. [SEAL.]

Filed October 8th, 1818.

Points put to the court.

JOHN and MARGARET MERCER, *vs* SAMUEL WATSON. } In the common pleas of Lancaster county.

The court are respectfully requested to give the following points in charge to the jury, and file it with the whole evidence and admissions given and appearing on his notes of record.

1st. That the deed dated the 30th March, 1785, from John Mercer and Mary his wife, to N. Thompson, is not duly acknowledged to convey the estate of inheritance of Margaret Mercer, so as to destroy the descent of the estate to the defendant, her sole heir at law.

2. That this action cannot be sustained, as James Mercer has devised all his real estate, which intercepts and destroys the plaintiff's claim as heir at law.

J. HOPKINS, *P. D.*

October 7, 1818.

3. To give it in charge to the jury, that when a justice or other officer is called upon to do an ex parte act affecting the rights of others, and in discharge of that duty he states what he has done, there can be no intendment or presumption that more was done than is stated; and that in case of the acknowledgment on the deed from Mercer and Wife to Thomson, the justice having stated what he did, it can't be intended or presumed he did more than he has stated.

J. HOPKINS, *P. D.*

October 7, 1818.

The counsel for the plaintiffs respectfully request the court to charge the jury on the following points:

1. That the acknowledgment of Margaret Mercer and James Mercer, of the deed dated the thirtieth day of May, seventeen hundred and eighty five, by James Mercer and Margaret Mercer, to Nathan Thompson, is good and not defective, and that by said deed, the interest of Margaret and James Mercer was divested, and the same was by said conveyance vested in the said Nathan Thompson.

2. That when an act of assembly makes it the duty of a justice of the peace, or a judge of a court, to a judicial act, and he certifies that he has done it, the presumption is that he has done all that he was required by law to do.

3. That John Mercer and Margaret Mercer have a right to maintain this suit in the character of cestui que trust, the persons beneficially interested in said estate, or that John Mercer can maintain it as surviving executor of James Mercer, deceased.

MOLTON C. ROGERS,
Att'y P. Q.

January term, 1818, No. 54.

JOHN MERCER and MARGARET MERCER, *vs.* SAMUEL WATSON. } Charge of court delivered 8th Oct., 1818.

This is a controversy between John Mercer and Margaret Mercer, claiming the land in dispute, in the right derived to them from the deceased James Mercer, their father, and Samuel Watson, who claims it as the sole heir at law of Margaret Mercer, who was the wife of James Mercer.

The estate indisputably belonged at one time to Margaret Mercer. It was vested in her while she was Margaret Patterson; and, after her intermarriage with James Mercer, she executed a deed for it in conjunction with her husband, to Nathan Thompson, who conveyed all his right and title to James Mercer in fee. The first objection to plaintiff's right of recovery is, that this action cannot be sustained, as James Mercer had devised all his real estate, which intercepts and destroys the plaintiff's claim as heir at law.

The court do not think there is much weight in this objection. Where a testator has devised his estate to be sold, until it be sold it descends to his heir at law. I am of opinion that John and Margaret Mercer have a right to maintain this suit, being the persons beneficially interested in the estate; and that John Mercer, being the sole executor of the last will and testament of James Mercer, and joining in the action, are circumstances which, of themselves, would prevent any legal objection which might otherwise arise on the foundation of that devise.

The second objection, and that which has been most strenuously insisted on, is, that the deed bearing date the thirtieth of March, seventeen hundred and eighty-five, from James Mercer and Margaret his wife, to Nathan Thompson, is not duly acknowledged so as to destroy the descent of the estate to the defendant, his sole heir at law. In the case of Watson against Bailey, (1 Binn. 470,) the point came before the Supreme Court, and they decided upon the very acknowledgment, that it was defective, and that therefore the deed did not pass the estate of the wife. Had the case of Watson and Bailey retained its original authority, and the arguments in support of the decision remained unshaken by sentiments subsequently expressed by the judges who decided it, I should have considered the law as settled by the highest tribunal in the State, and, whatever might have been my own opinion, would have laid down the law as it was declared to be in that case. But it does appear to me that the principles which governed the court in the case of Watson and Bailey have been departed from in subsequent decisions, and that, in conformity to the reasons on which those decisions were founded, if the case were now before them they would decide it in a manner differently from that in which it was formerly determined. I therefore, with the most respectful deference for the sentiments of the judges who decided the case of Watson and Bailey, consider myself at full liberty to express my own opinion formed upon the point, after the fullest consideration which I have been able to give to it. It is as follows:

That the acknowledgment of Margaret Mercer and James Mercer of the deed, dated the thirtieth day of May, one thousand seven hundred and eighty-five, made by James Mercer and Margaret Mercer to Nathan Thompson, is good and sufficient in law, and that by the said deed the interest of Margaret and James Mercer was divested, and the same transferred to, and vested in, the said Nathan Thompson. I am supported by the principle that when the law trusts to a judicial officer, the power to do a certain particular, and he certifies that he has done it, every thing forming that particular is presumed to have been done. If you concur with the court in these sentiments, your verdict will be in favor of the plaintiffs; otherwise, you will find for the defendant.

Filed at the request of def'ts counsel.

WALTER FRANKLIN.

October 9th, 1818.

Copy of notes of testimony filed.

Lancaster, Wednesday, October 7th, 1818, A. M. President alone.

JOHN MERCER and MARGARET MERCER, *vs.* SAMUEL WATSON. } Jan'y, T. 1818. No. Ejectment—defendant pleads not guilty; issue and rule for trial: suit instituted 2d December, 1817.

Admitted that James Mercer died, leaving by Sarah, his first wife, five children, to wit, Samuel, Alexander, John, William, and Margaret. Before the commencement of the above suit, it is also admitted that Samuel, Alexander, and William, were deceased, Samuel and Alexander left issue, and William died intestate, unmarried, and without issue. It is also admitted that the plaintiffs in this cause are two of the children of the said James

Mercer and Sarah his wife: (see paper filed, signed James Buchanan, att'y for pl'ffs, James Hopkins for defendant.)

Clerk reads statement of plaintiffs.

Mr. Rogers opens for the plaintiffs.

19th October, 1743, patent. Admitted that the estate was vested in Margaret Patterson in fee, who afterwards intermarried with James Mercer.

Deed 30th May, 1785. James Mercer, and Margaret his wife, to Nathan Thompson, in fee; consideration £800 for the estate in question; receipt for consideration money; reads acknowledgment, recorded 16th June, 1785.

Deed 30th May, 1785. Nathan Thompson to James Mercer in fee, consideration £1,000 for same estate, on terms specified in the deed; receipt for consideration money acknowledged same day, and recorded 16th June, 1785.

Plaintiff's claim, as heirs of James Mercer, reads admission as per agreement above copied.

Mr. Hopkins for defendant.

Defendant is the son of the sister of Margaret Mercer, Margaret Mercer died without issue, and defendant is her heir at law. Sarah, the sister of Margaret Mercer, married David Watson, and the defendant is her only child. He is entitled, unless the deeds which have been read conveyed away the estate legally. The law prescribes the only mode in which the estate of a married woman can be transferred. This law not complied with. Reads act of Assembly, 1 Dall. Ed. P. L. 535, 24 Feb'y, 1770, acknowledgment not conformable—contents not stated to be made known to her—not stated that she executed it voluntarily and without coercion, &c. Reads record of suit in circuit court; David Watson and Sarah his wife, vs. the casual ejector, with notice to John Mercer, Francis Bailey, John Messencope, and Joseph Lefever, to March term, 1805, No. 4.

May 13th, 1807. Verdict for pl'ffs. Motion for new trial overruled: appeal to the Supreme Court. Admitted that the defendant, Samuel Watson, is the only child of Sarah, the sister of Margaret Mercer, and that he is the sole heir at law of Margaret Mercer. Mr. Hopkins reads record of proceedings in Supreme Court to January term, 1807. December 31, judgment affirmed, and plaintiffs put into possession. Case reported in Binney, 470. Reads will of James Mercer to show that John Mercer was one of the executors of James Mercer, dated 2d November, 1803. Executors authorized to sell estate. The other executors were Francis Bailey, John Messencope, and Joseph Lefever; it also shows, as is alleged by Mr. Hopkins, that he had disposed of the estate, and thereby plaintiffs intercepted and destroyed the plaintiffs claim as heirs at law.

Mr. Rogers reads renunciation of Joseph Lefever, 6 Dec'r, 1804. Caveat of John Mercer, renunciation of John Messencope, 8th Dec'r, 1804. Certificate that, on the 10th Dec'r, 1804, will was proved, and letters testamentary granted to John Mercer and Francis Bailey.

Joseph Lefever sw'n. Francis Bailey died the latter end of September was a year, at any rate before the election, and before the suit was brought. He was dead when I was in Philadelphia. I was there the first or second week in November, and he was dead then some weeks. The heirs employed me to bring this suit. I am not interested in this suit; am not to receive any benefit from this suit. I expect to get back the money I was made to pay. I am not interested in the event of this suit. The damages were assessed against me by a jury.

Filed at the request of the def'ts' counsel.

October 9th, 1818. WALTER FRANKLIN.

Copy of the writ of error and recognizance.

PENNSYLVANIA, *ss.*

[SEAL.] The Commonwealth of Pennsylvania, to the judges of the court of common pleas for the county of Lancaster, greeting:

Because in the record and process and in rendering the judgment, in a certain plaint which was in our said court, before the judges of the same court, by our suit between John Mercer and Margaret Mercer, plantiffs, and Samuel Watson, defendant, which said Samuel Watson having died intestate, leaving David Watson, Sarah Watson, Esther Watson, Maria Watson, Ann Watson, Samuel P. Watson, and Jane Watson, his heirs at law, for whom the court have appointed John Cooper guardian, as it is said manifest error hath intervened to the great damage of the said David Watson, Sarah Watson, Esther Watson, Maria Watson, Ann Watson, Samuel Watson, and Jane Watson, as by the complaint of the same David Watson, Sarah Watson, Esther Watson, Maria Watson, Ann Watson, Samuel P. Watson, and Jane Watson, minor children of the said Samuel Watson, deceased, who died intestate, complaining by their guardian, John Cooper aforesaid, we have received information: We, willing that if any error be therein, it should be corrected, and that speedy justice be done to the parties in this part, do command you that if judgment be as it is said, rendered in the said plea, then the record and process, and all things touching the same, under your seal, distinctly and openly, you have before the judges of the supreme court, at a supreme court to be held at Lancaster, in and for the Lancaster district of said Commonwealth, on the third Monday of May next, and this writ; that the record and process aforesaid being inspected, we may further cause to be done what of right, and according to our laws and customs ought. Witness the honorable William Tilghman, esquire, chief justice of our supreme court, at Lancaster, the thirtieth day of May, in the year of our Lord one thousand eight hundred and eighteen, and of the Commonwealth the forty-second.

HENRY EICHOLTZ,
Prothonotary of Lancaster District.

Allowed by THOMAS DUNCAN.

Endorsed on the foregoing:

31. May term, 1819.

DAVID WATSON, SARAH WATSON, ESTHER WATSON, MARIA WATSON, ANN WATSON, SAMUEL P. WATSON, and JANE WATSON, heirs at law of SAMUEL WATSON, deceased, who died intestate, and for whom the court have appointed JOHN COOPER, guardian, pltff's. in error,
vs.
JOHN MERCER, and MARGARET MERCER, defdts. in error.

Writ of error to the court of common pleas of Lancaster county.
J. HOPKINS, *Atty. for Pltffs.*

Received in the court of common pleas of Lancaster county, April 26th, 1819.

To the honorable the Judges of the supreme court of the Commonwealth of Pennsylvania: The record of the within stated suit, together

with all things touching the same, so full and entire as they remain in our court, we hereby return, as we are within commanded, April 26th 1819.

WALTER FRANKLIN.

Record filed in the supreme court, May 15th, 1819.

Recognizance.

DAVID WATSON, SARAH WATSON, ESTHER WATSON, MARIA WATSON, ANN WATSON, SAMUEL P. WATSON, and JANE WATSON, heirs at law of SAMUEL WATSON, deceased, by their guardian JOHN COOPER, appointed by the court guardian ad litem, pltff's. in error.

vs.

JOHN MERCER and MARGARET MERCER.

In the Lancaster district of the supreme court, of May term, 1819, No. 31.

We acknowledge to owe and be indebted to the said John Mercer and Margaret Mercer in the sum of five hundred dollars lawful money of the United States, of our goods and chattels, lands and tenements, jointly and severally, to be made and levied to the use of the said John Mercer and Margaret Mercer, their executors, administrators, and assigns, if default be made, in the following condition:

Whereas the said heirs at law of the said Samuel Watson, deceased, by their guardian John Cooper, have prosecuted a writ of error from the Lancaster district of the supreme court, to the court of common pleas of Lancaster county, directed on a judgment obtained against the said Samuel Watson, deceased, at the suit of the said John Mercer and Margaret Mercer: now, the condition of this recognizance is such that, if the said heirs at law, by their guardian John Cooper, shall prosecute the said writ of error with effect, and, in case the said judgment shall be affirmed, shall pay the plaintiffs below their damages and costs in the former judgment affirmed, and also pay to them, their damages and costs to be awarded for delay of execution, then this recognizance to be void, otherwise of force.

JOHN COOPER.
WM. McCAUSLAND.

Taken and acknowledged the twenty-sixth day of April, 1819, before
WALTER FRANKLIN.

Certificate of Clerk of Supreme Court.

In the supreme court of the Commonwealth of Pennsylvania, for the Lancaster district, of May term, 1819, No. 31.

DAVID WATSON, SARAH WATSON, ESTHER WATSON, MARIA WATSON, ANN WATSON, SAMUEL P. WATSON, and JANE WATSON, heirs of law of SAMUEL WATSON, deceased, who died intestate, and for whom the court have appointed JOHN COOPER guardian, pltff's. in error,

vs.

JOHN MERCER and MARGARET MERCER, defdt's. in error.

Writ of error to the court of common pleas of Lancaster county.

[SEAL.] And now, June 3d, 1820, at a supreme court held at Lancaster, for the Lancaster district, before the honorable John B. Gibson and Thomas Duncan, esquires, justices of said court. On

argument, the court reversed the judgment of the court of common pleas Lancaster county, in this action.

Attest: HENRY EICHOLTZ, *Proth'y.*

STATE OF PENNSYLVANIA, *Lancaster county, ss.*

I, Christian Bachman, prothonotary of the court of common [SEAL.] pleas in and for said county, do certify that the foregoing contains a copy of the record of the suit wherein John Mercer and Margaret Mercer are plaintiffs, and in which Samuel Watson was originally the defendant, with the proceeding therein had. In testimony whereof, I have hereunto set my hand, and the seal of said court, at Lancaster, this twenty-third day of November, in the year of our Lord one thousand eight hundred and thirty-two.

CHRIST. BACHMAN, *Proth'y.*

In the court of Common Pleas of Lancaster county, of January term, 1818, No. 55, (it is thus contained:)

Rogers. JOHN MERCER and MARGARET MERCER,
Hopkins. 55 *vs.*
Ut due. SAMUEL WATSON.

April 12th, 1829, defendant's death suggested.

Prot. Pass. - - - - - - -	$2 37
Prot. Porter - - - - - - -	4 25

Sums. in ejectment. Issued Decemr. 3d, 1817, 13 miles, served by copy. April 27th, 1818, defendant pleads not guilty. Issue and rule for trial, April 26th, 1819. On motion of Mr. Hopkins, the court appoint John Cooper, of Leacock township, guardian *ad litem* in this suit, the defendant being now dead. March 12th, 1821, plaintiffs suffer a nonsuit

Copy of the precipe and statement.

JOHN MERCER and MARGARET MERCER,
vs.
SAMUEL WATSON.

Issue summons in ejectment, that Samuel Watson appear before the judges of the court of common pleas in and for the county of Lancaster, to be holden at Lancaster, on the day of next, then and there to answer to a certain complaint made by John Mercer and Margaret Mercer, that he, the said Samuel *Mercer*, hath now in his actual possession a tract of land situate in Strasburg township, in said county, beginning at a post, being the corner of the above described tract of land, thence by the same, west one hundred and twenty-four perches, to a post; thence by the same, north one hundred and two perches, to a post; thence by the same, west five perches, to a post; thence by the same north thirty-five and a half perches, to Pequea creek; thence down the said creek, on the north side thereof, by the several courses thereof, one hundred and forty-eight perches, to a post; thence by land of David Watson, in right of his wife, south seven degrees east, one hundred and thirteen perches, to a post; thence by the same, south eighty-six degrees, west forty perches, to a post; thence by lands of Matthew McClung and Jacob Beck, south south-east eighty-seven perches, to a post; thence by the same east two hundred and seventeen perches, to a white oak; and thence north thirty-eight perches, to the place of beginning; containing one hun-

dred and sixty acres, they being part of a large tract of two hundred and ten acres and allowance, &c., the right of possession, or title to which they, the said John Mercer and Margaret Mercer, say is in them, not in the said Samuel Watson, all which they are prepared to prove before the said court, &c.

MOTLON C. ROGERS, *Att. for Pl'iffs.*

JOHN PASSMORE, Esquire.

Filed Nov. 29th, 1817.

Copy of the writ.

Lancaster county, ss.

[seal.] The Commonwealth of Pennsylvania to the sheriff of Lancaster county, greeting: You are hereby commanded that you summon Samuel Watson to be and appear before the judges of the court of common pleas in and for said county, to be holden at Lancaster, on the third Monday in January next, then and there to answer to a certain complaint made by John Mercer and Margaret Mercer, that he, the said Samuel Watson, now hath in his actual possession a tract of land situate in Strasburg township, Lancaster county, beginning at a post, being the corner of lands now in possession of said Samuel Watson; thence by the same, west one hundred and twenty-four perches, to a post; thence by the same, north one hundred and ten perches, to a post; thence by the same, five perches, to a post; thence by the same, north thirty-five and a half perches, to Pequea creek; thence down the said creek, on the north side thereof, by the several courses thereof, one hundred and forty-eight perches, to a post; thence by land of David Watson, in right of his wife, south seven degrees, east one hundred and thirteen perches, to a post; thence by the same, south eighty-six degrees, west forty perches, to a post; thence, by lands of Mathew M'Clung and Jacob Beck, south south-east eighty-seven perches, to a post; thence by the same east two hundred and seventeen perches, to a white oak; and thence north thirty-eight perches, to the place of beginning, containing one hundred and sixty acres, being part of a large tract of two hundred and ten acres, &c. the rights of possession or title to which they, the said John Mercer and Margaret Mercer *saith* is in them, and not in the said Samuel Watson. All which they, the said John Mercer and Margaret Mercer, avereth they are prepared to prove before our said court. Hereof fail not.

Witness, the honorable Walter Franklin, esquire, president of our said court, at Lancaster, the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and seventeen.

JOHN PASSMORE, *Prot.*

Endorsed on the foregoing writ:

55. January term, 1818.
JOHN MERCER and MARGARET MERCER,
vs.
SAMUEL WATSON.

Sums. in ejectment, 13 miles, served by copy: so answers Rogers.

GEORGE HAMBRIGHT, *Shff.*

STATE OF PENNSYLVANIA, *Lancaster county, ss.*

[seal.] I, Christian Bachman, prothonotary of *of* the court of common pleas in and for said county, do certify that the foregoing contains a

correct copy of the record of the suit, wherein John Mercer and Margaret Mercer are plaintiffs, and Samuel Watson is defendant, with the proceeding therein had.

In testimony whereof, I have hereunto set my hand, and the seal of said court, at Lancaster, this twenty third day of November, in the year of our Lord one thousand eight hundred and thirty-two.

CHRIST. BACHMAN, *Proth.*

In the district court for the city and county of Lancaster, June term, 1826, No. 24.

Copy of appearance docket.

Buchanan. Rogers.	JOHN MERCER and MARGARET MERCER,	
	vs.	
Montgy. Hopkins.	JANE WATSON, PATTERSON WATSON, DAVID WATSON, SAMUEL WATSON, SAMUEL SMOKER, and SARAH his wife, MARIA WATSON, HETTY WATSON and JANE WATSON.	Sums. in ejectment, issued April 26th, 1826, 14 m. served by copy.
	Precipe filed.	

September 11th, 1826, defendants plead not guilty, and issue and rule for trial continued from term to term, until December term, 1826; and now December 6th, 1826, a jury being called, came, to wit, Jonathan Hinkle, John Jones, Joseph Chambers, Simon J. Young, John Bastick, John Becker, Christian Eggart, esquire, John Reigart, Martin Eshleman, Jacob Leibley, John Brown, and Peter Good, twelve good and lawful men of the county of Lancaster, who, being duly sworn or affirmed, upon their oaths and affirmations respectively do say, that they find for the plaintiff, John Mercer, surviving executor, with six cents damages and six cents costs.

December 8th, 1826. *Judgment nisi.*

Same day, Mr. Montgomery, on reasons and affidavit filed, moves for a rule to show cause why a new trial should not be granted.

May, 1827, rule to show cause granted. June, 1827, argued C. A. V., and now February 5th, 1828, rule discharged and judgment.

Writ of error to the Supreme Court, to May term, 1828.

June 5th, 1828, writ of error quashed by the Supreme Court; (see decree filed.)

Writ of error, coram vobis, to June term, 1828, No. 86, which has been removed to the Supreme Court.

This cause again removed to the Supreme Court, to May term, 1832, No. 13.

Copy of the finding of the Jurors.

We, the jurors, do hereby find for the plaintiff—Jonar Hinkle, Martin Eshleman, Peter Good, John Bostick, Christian Eggart, John Beeker, John Jones, Simon J. Young, Jacob Leibley, John Brown, Jno. Reigart, Joseph Chambers.

Copy of precipe.

JOHN MERCER and MARGARET MERCER,
vs.
JANE WATSON, PATTERSON WATSON, DAVID WATSON, SAMUEL WATSON, SAMUEL SMOKER, and SARAH his wife, MARIA WATSON, HETTY WATSON, and JANE WATSON.

Issue summons in ejectment, commanding the defendants to appear before the president of the district court in and for the city and county of Lancaster, on the second Monday of June next, to answer to a certain complaint made by the plaintiffs, that the defendants now have in their actual possession a certain plantation or tract of land containing forty-one acres and a half, or thereabouts, be the same more or less, situate in the township of Strasburg, and county aforesaid, beginning at a white oak, a corner of George Accord's land; thence by the same, east one hundred and six perches, to a post; thence, south fifteen perches, to a post; thence by land of the heirs of Joseph Patterson, deceased, west one hundred and twenty four perches, to a post; thence, by the same, north one hundred and ten perches, to a post; thence by the same, west five perches, to post; thence by the same, north one hundred thirty-five and an half perches, to Pequea creek; thence up said creek twenty-three perches and five links, to a post; thence by land of George Accord aforesaid, south two hundred and twenty-eight perches, to the place of beginning—the right of possession or title to which they, the said plaintiffs, say is in them, and not in the said defendants, all which they, the said plaintiffs, aver they are prepared to prove before our said court. And, also, another plantation or tract of land containing one hundred and sixty acres, they being part of a large tract of two hundred and ten acres, and allowance, or thereabouts, be the same more or less, situate in Strasburg township, and county aforesaid, beginning at a post, being the corner of the above described tract of land; thence by the same, west one hundred and twenty-four perches, to a post; thence by the same, north one hundred and ten perches, to a post; thence by the same, west five perches, to a post; thence by the same, north thirty five and an half perches, to Pequea creek; thence down the said creek, on the north side thereof, by the several courses thereof, one hundred and forty-eight perches, to a post; thence by land of David Watson, in right of his wife, south seven degrees, east one hundred and thirteen perches, to a post; thence by the same south eighty-six degrees, west forty perches, to a post; thence by land of Mathew McClung and Jacob Beck, south south-east eighty seven perches, to a post; thence by the same east two hundred and seventeen perches, to a white oak; thence north thirty-eight perches, to the place of beginning; the right of possession or title to which they, the said plaintiffs, say is in them, and not in the said defendants—all which they, the said plaintiffs, aver they are prepared to prove before our said court.

HENRY ROGERS.
JAMES BUCHANAN

A. W. SAMPLE, jr. esq., *Prothy.*
April 25, 1826.

Filed April 26, 1826

Copy of writ.

City and county of Lancaster, ss.

[SEAL.] The Commonwealth of Pennsylvania to the sheriff of Lancaster county, greeting: You are hereby commanded that you summon Jane Watson, Patterson Watson, David Watson, Samuel Watson, Samuel Smoker, and Sarah his wife, Maria Watson, Hetty Watson, and Jane Watson, to appear before the President of the district court for the city and county of Lancaster, at a district court to be holden at Lancaster, on the second Monday in June next, then and there to answer to a certain complaint made by John Mercer and Margaret Mercer, that they, the said Jane Watson, Patterson Watson, David Watson, Samuel Watson, Samuel Smoker, and Sarah his wife, Maria Watson, Hetty Watson, and Jane Watson, now have in their actual possession a certain plantation or tract of land containing forty one acres and an half, or thereabouts, be the same more or less, situate in the township of Strasburg, and county aforesaid, beginning at a white oak, a corner of George Accord's land; thence by the same, east one hundred and six perches, to a post; thence south fifteen perches, to a post; thence by lands of the heirs of Joseph Patterson, deceased, west one hundred and twenty-four perches, to a post; thence by the same, north one hundred and ten perches, to a post; thence by the same, west five perches, to a post; thence by the same, north one hundred and thirty-five and a half perches, to Pequea creek; thence up said creek twenty-three perches and five links, to a post; thence by land of George Accord aforesaid, south two hundred and twenty-eight perches, to the place of beginning. And also another plantation or tract of land, containing one hundred and sixty acres, they being part of a large tract of two hundred and ten acres and allowance, or thereabouts, be the same more or less, situate in Strasburg township, and county aforesaid, beginning at a post, being the corner of the above described tract of land; thence by the same, west one hundred and twenty-five perches, to a post; thence by the same, north one hundred and ten perches, to a post; thence by the same west five perches, to a post; thence by the same, north thirty-five and a half perches, to Pequea creek; thence down the said creek, on the north side thereof, by the several courses thereof, one hundred and forty-eight perches, to a post; thence by land of David Watson, in right of his wife, south seven degrees, east one hundred and thirteen perches, to a post; thence by the same, south eighty-six degrees, west forty perches, to a post; thence by land of Mathew McClung and Jacob Beck, south southeast eighty-seven perches, to a post; thence by the same, east two hundred and seventeen perches, to a white oak; and thence north thirty-eight perches to the place of beginning; the right of possession or title to which said plantations or tracts of land they, the said John Mercer and Margaret Mercer, say is in them, and not in the said Jane Watson, Patterson Watson, David Watson, Samuel Watson, Samuel Smoker, and Sarah his wife, Maria Watson, Hetty Watson, and Jane Watson, all which they, the said John Mercer and Margaret Mercer, aver they are prepared to prove before our said court. Hereof fail not.

Witness the honorable Ebenezer G. Bradford, president of our said court at Lancaster, the seventeenth day of March, in the year of our Lord one thousand eight hundred and twenty-six.

N. W. SAMPLE, Jr. *Proth.*

Endorsed on the foregoing writ:

14 miles. Served by copies; so answers WM. WHITE, *Shff.*

Copy of agreement of attorneys.

MERCER, *vs* WATSON. } June, 1826. No. 24.

Samuel Patterson died intestate, seized of the property in dispute, leaving issue, John, *Margaret*, Samuel, Joseph, and *Sarah*.

John and Samuel died intestate, unmarried and without issue.

By proceedings in partition of August, 1784, the 41¼ acres were assigned to James Mercer, husband of the said Margaret, in right of his said wife, and the 160 acres were allotted to Joseph Patterson, who afterwards died intestate, unmarried, and without issue.

James Mercer died, leaving by Sarah, his first wife, five children, viz. Saml., Alexander, John, William and Margaret; that, before the commencement of this suit, Saml., Alexander, and William, were deceased; that Saml. and Alexandria left issue, and Wm. died intestate, unmarried, and without issue, and plaintiffs are two of the children of the said James Mercer, and Sarah his first wife. His second wife, Margaret Patterson, died intestate, and without issue. Sarah, the first wife of James Mercer, was in no way related to Margaret, the second wife.

Sarah Patterson married David Watson, by whom she had issue one child, Samuel, who died, leaving the defendants, his widow and children, and heirs at law, who are in possession of the property in dispute.

AMOS ELLMAKER, HENRY ROGERS, } *Atts. for Plffs.*
JAMES HOPKINS, JOHN R. MONTGOMERY, } *P. D.*

December 6th, 1826.

Copy of defendants' points.

MERCER, *vs.* WATSON, &C. } In the district court of the city and county of Lancaster.

The honorable court are respectfully requested to give the following points connected with the matters in dispute in this cause, and file his charge of record during the present session of the court, together with the notes of the evidence to be copied by the defendant.

1. That the act of assembly, passed the 3d April, 1826, entitled a supplement to an act entitled, an act for the better confirmation of *of* the estates of persons holding or claiming under *feme coverts*, and for establishing a mode in which husband and wife may hereafter convey their estates, as far as the same operates upon the right and title acquired by the defendants' ancestors, by the decision in their favor by the supreme court of Pennsylvania, on the 31st of December, 1808, in the suit then depending, and given in evidence in this cause; and, again in their decision on the 3d June, 1820, in the suit given in evidence in this cause, and also by the non-suit in another suit given in evidence in this cause, is, if the said act was intended to operate upon such rights so validated and confirmed, unconstitutional and void.

2. That the said act was designed and intended to aid purchasers under a bona fide sale for full and fair value, and probably titles which had incepted, but never came into collision with actual vested rights acquired by des-

cent, and not to divert titles acquired by descent, and sanctioned by two decisions of the supreme court of the State, before it passed, which were opposed by the two formal conveyances given in evidence by the plaintiff.

3. That this action is misconceived. J. HOPKINS.

JOHN R. MONTGOMERY.

Copy of the court's answer to def'ts' points.

MERCER et al.
vs.
WATSON et al.

Answer of the court to the defendants' points:

1st. Answer to the first point:

The act of 1770 created a method of authenticating deeds executed by a feme covert, designed to convey her real estate. That act enacted that a conveyance should not be valid, unless the feme had given her full and free consent, and had, on a separate examination, voluntarily alienated her real estate. The act directed that the evidence of that assent and intent should be an acknowledgment of the deed in a specific manner. As it was competent to the Legislature, in 1770, to create a rule for conveying real estate of a feme covert, and establish what should be evidence of compliance with that rule, so, in 1826, the Legislature had a constitutional power to repeal that provision altogether, or modify it, and declare what should be received as evidence, that the requisite of the act of 1770 had been complied with. The act was formed to legalize what, before, was considered defective evidence of the acknowledgment of a deed by a feme covert, as relative to *all* their deeds made and acknowledged previous to the 1st of September, 1826. This act of the 3d April, 1826, is to be considered, to all intents, constitutional and effective as far as it applies to this case, and to the query put in the defendants' first point.

2d. Answer to the second point:

The act of the 3d April, 1826, applies to this case, and, in the opinion of the court, removes all objections to the form and substance of the acknowledgment of the deed executed by James Mercer, and Margaret his wife, on the 30th May, 1785.

3d. Answer to the third point.

The action is not misconceived. James Mercer can recover under the will, according to the statement filed. As to the two verdicts, the reversal of one judgment annulled it, and the verdict, and no bar to the plaintiffs' recovery, arises therefrom. E. G. BRADFORD.

Copy of precipe to issue writ of error.

JANE WATSON, PATTERSON WATSON, DAVID WATSON, SAMUEL WATSON, SAMUEL SMOKER, and SARAH his wife, MARIA WATSON, HETTY WATSON, and JANE WATSON, pl'iffs in error,
vs.
JOHN MERCER, and MARGARET MERCER, defts. in error.

Issue writ of error to the judges of the district court of the city and county of Lancaster, to remove the record and all the proceedings in a action of ejectment brought by the defendants in error in the said court against the plaintiffs in error to June term, 1826, No. 24, in the said court, into the Supreme Court of the Lancaster district.

JAMES HOPKINS, *P. Q. in error.*

Watson et al. vs. Mercer et al. 2105. ~~89~~

To the Proths. of the Supreme Court of the Lancaster district.

Copy of affidavit.

LANCASTER COUNTY, *ss.*

David Watson, one of the defendants above in the action below, and now one of the plaintiffs in error, now, being duly sworn according to law, saith that the above writ of error is not intended for delay; and further saith not.

DAVID WATSON.

Sworn and subscribed, this 11th day of November, 1831.
Before WILLIAM BAUSMAN.

Endorsed on the foregoing precipe and affidavit:

Issued 11th November, 1831.
Filed November 11, 1831.

Copy of writ of error.

PENNSYLVANIA, *ss.*

[SEAL.] The Commonwealth of Pennsylvania to the judges of the district court for the city and county of Lancaster, greeting:

Because, in the record and process, and in rendering the judgment in a certain plaint which was in our said court, by our writ, between John Mercer and Margaret Mercer, plaintiffs, and Jane Watson, Patterson Watson, David Watson, Samuel Watson, Samuel Smoker, and Sarah his wife, Maria Watson, Hetty Watson, and Jane Watson, defendants, to June term, 1826, No. 24, as it is said manifest error hath intervened to the great damage of the said Jane Watson, Patterson Watson, David Watson, Samuel Smoker, and Sarah his wife, Maria Watson, Hetty Watson, and Jane Watson. as by the complaint of the same Jane Watson, Patterson Watson, David Watson, Samuel Smoker, and Sarah his wife, Maria Watson, Hetty Watson, and Jane Watson, we have received information: We, willing that, if any error be therein, it should be corrected, and that speedy justice be done to the parties in this part, do command you, that, if judgment, as it is said, be rendered in the said plea, then the record and process, and all things touching the same, under your seal, distinctly and openly, you have before the judges of our Supreme Court at a supreme court to be held at Lancaster, in and for the Lancaster district of said Commonwealth, on the Thursday next after the third Monday of May next, and this writ: that the record and process aforesaid being inspected, we may further cause to be done what of right, and according to our laws and customs, ought.

Witness the *the* honorable John B. Gibson, esquire, chief justice of *of* our Supreme Court at Lancaster, the eleventh day of November, in the year of our Lord one thousand eight hundred and thirty-one, and of the commonwealth the fifty-sixth.

SAMUEL A. HOUSTON,
Prothonotary of the Lancaster county.

Allowed by CHARLES HUSTON.

Endorsed on the foregoing writ of error:

Issued Nov. 11th, 1831.
Received in the district court November 11th, 1831.
Received in the Supreme Court Nov. 17th, 1831.

J. HOPKINS.

Copy of recognizance.

JANE WATSON, PATTERSON WATSON, DAVID WATSON, SAMUEL WATSON, SAMUEL SMOKER, and SARAH his wife, MARIA WATSON, HETTY WATSON, and JANE WATSON,
vs.
JOHN MERCER and MARIA MERCER.

We acknowledge to owe, and be indebted to John Mercer and Margaret Mercer in the sum of two hundred dollars, of our goods and chattels, lands and tenements, jointly and severally, to be made and levied to the use of the said John Mercer and Margaret Mercer, their executors, administrators, and assigns, if default be made, in the following condition:

Whereas the said Jane Watson, Patterson Watson, David Watson, Samuel Watson, Samuel Smoker, and Sarah his wife, Maria Watson, Hetty Watson, and Jane Watson, have prosecuted a writ of error from the Lancaster district of the Supreme Court, to the district court for the city and county of Lancaster, directed on a judgment obtained against the said Jane Watson, Patterson Watson, David Watson, Samuel Watson, Samuel Smoker, and Sarah his wife, Maria Watson, Ketty Watson, and Jane Watson, at the suit of the said John Mercer and Margaret Mercer.

Now, the condition of this recognizance is such, that, if the said Jane Watson, Patterson Watson, David Watson, Samuel Watson, Samuel Smoker, and Sarah his wife, Maria Watson, Hetty Watson, and Jane Watson, shall prosecute the said writ of error with effect, and in case the said judgment shall be affirmed, shall pay the damages and costs in the former judgment affirmed; also the damages and costs to be awarded for delay of execution—then this recognizance to be void; otherwise of force.

DAVID WATSON.
JOHN LIGHTNER.

Taken and acknowledged, the 14th of November, A D. 1831, before me.
A. L. HAYES,
Judge district court for the city and county of Lancaster.

Copy of the judge's return, endorsed on the writ of error.

The record and process, with all things touching the same, so full and entire as before us they remain, to the honorable the justices of the Supreme Court of the Commonwealth of Pennsylvania, we certify and send as we are commanded. So answers: A. L. HAYES,
Judges of the district court for the city and county of Lancaster.

In the Supreme Court of the Commonwealth of Pennsylvania, for the Lancaster district, of May term, 1832, No. 13.

Copy of docket entry.

Hopkin's Montgy Ellmaker. Rogers.	JANE WATSON, PATTERSON WATSON, DAVID WATSON, SAMUEL WATSON, SAMUEL SMOKER, and SARAH his wife, MARIA WATSON, HETTY WATSON, and JANE WATSON, pl'ffs. in error. *vs.* JOHN MERCER and MARGARET MERCER, def'ts. in error.	Writ of error to the district court for the city and county of Lancaster. Issued Nov. 11th, 1831. Nov. 15th, 1832, argument commenced. Resumed Nov. 24th, 1832, C. A. V. November 30, 1832, judgment affirmed.

Ut.	1 50	Precipe and affidavit filed.
Tax.	3 50	Nov. 17th, 1831, record returned.
		May 26, 1832, errors filed.

5 00 paid to Proth.

Writ of error to the Supreme Court of the United States.
Errors rejected by the court, filed Nov. 24th, 1832.
Request to file opinion, filed Nov. 27th, 1832.
Decr. 19th, 1832, opinion of court filed.

Copy of assignment of errors.

JANE WATSON et al. } Of May term, 1832, No. 13.
vs.
JOHN MERCER et al. }

Errors assigned.

1. There is error in the answers of the court to each of the points of law propounded by the counsel for the defendant.
2. The verdict rendered is illegal, and out of the issue, and the judgment entered upon it irregular and void.
3. There is error *in* rendering judgment on the demurrer joined, and in each and every part of the opinion of the court on the general and special demurrer in all the causes of demurrer.
4. The general errors.

JAMES HOPKINS, } *P. Quer.*
JOHN R. MONTGOMERY, }

May 26th, 1832.

WATSON et al., pl'iffs in error, }
vs.
MERCER et al., def't in error. }

The pl'iffs in error move the honorable court for leave to file the following additional error.

1. That this suit is barred by the statutes of limitation.
2. That as this ejectment is brought for the same lands which were recovered by the records contained in the record in this cause, this ejectment is barred by the act of the 15th of April, 1807, entitled "A supplement to an act to regulate arbitrations and proceedings in courts of justice."

CITY OF LANCASTER, *ss.*

Before me, an alderman in an for said city, came David Watson, one of the plaintiffs in error above named, and being duly sworn according to law, doth depose and say that, as he has been instructed, and verily believes, the above stated errors are true and essential to be assigned for the purpose of sustaining the defence taken, and attaining the justice of this cause.

DAVID WATSON.

Sworn and subscribed before me, this 22d day of November, 1832.

SAML. DALE.

Endorsed on the foregoing additional errors:
Filed Nov. 24th, 1832, after being obected to by the counsel for the defendants in error, and rejected by the court.

Copy of request to file opinion.

WATSON and others, pl'iffs. in error, } In the Supreme Court of the Lancaster district, writ of error argued, and curia advisare vult.
vs.
MERCER, def'ts. in error. }

The Supeme Court are respectfully requested to file their opinion of record on all the points contained in the record and proceedings returned in this cause. Nov. 26th, 1832.

JAMES HOPKINS.
JOHN R. MONTGOMERY.

Endorsed:—Filed Nov. 27th, 1832.

Opinion of C. J. Gibson.

WATSON, *vs.* MERCER.

To enable a married woman to convey her estate, whether as a gift or a purchase, she was clothed, by the act of 1770, with the capacity of a feme sole, subject but to the concurrence of her husband, and the examination of a magistrate, to guard against an improper use of his influence. The cause which induced the supplementary provision of 1826, is recited to be that conveyances of estates "*sold* for a legal and sufficient consideration," had failed of effect by reason of an opinion entertained by the courts, that a specification of the particulars of the separate examination was essential to the validity of the deed; and hence an argument that the benefit of the provision was intended for none but purchasers. Such undoubtedly is the recital of the preamble; but the enacting clause is applicable in its terms to every *bona fide* conveyance whatever. What may have been intended by the words *bona fide*, cannot be determined with certainty either from their intrinsic meaning or the context. A restraint of the remedy to bona fide cases may have been intended to leave the question of actual imposition or constraint an open one, in order to let in proof to rebut the presumption of fairness and free agency to be drawn in the first instance from the naked fact of acknowledgment; but the words certainly have no relation to a purchase, nor do they indicate any thing, perhaps, beyond an untramelled intent to pass the estate. Undoubtedly they were not meant to embarrass the remedy with distinctions between purchasers and volunteers, or to establish one rule for a gift to a parent or child, and another for a sale, which is virtually a gift to the husband of the purchase money; for it certainly can be of but little value to the question of protection, whether the conveyance is eventually to put him in possession of the estate or the price of it. There was evidently no purpose to change the measure of the wife's protection under the original act, the object plainly being to restore it to what was supposed to be its true construction, whether the transaction were a gift or a purchase, instead of assigning a double meaning to the same words, by leaving the interpretation of the courts untouched as to the one class of grantees, and introducing a different one as to the other. The effect of a recital in the preamble of a statute was shown in Scidenbender vs. Charles, 4 S. and R. 151, to be insufficient to control the enacting clause, unless to avoid an unexpected mischief, or some monstrous injustice, neither of which is apparent in the case before us. It is contended that the act ought to be so construed as to exclude it, by reason of the judgment which had passed in a former action for the present defendants; and for this reliance is had on the decision in Barnet vs. Barnet, 15 S. and R. 72, in which, however, no more was decided than that the abrogation of a rule, which had made a different case, did not vitiate a judgt. pending a writ of

error, which was free from error, when it was pronounced, Certainly the supplementary act was not intended to operate retrospectively on the regularity of judicial proceedings; and it would have been strange had this court so construed it as to make that erroneous by relation, which had been done in accordance with its own decision. The argument would be incontrovertible, if a judgt. in ejectment were conclusive of the title; but the decision had regard to the right of possession, not as it appears now, but as it appeared when made by a rule which no longer exists. In a second ejectment, the judgt. is on the facts presented, however modified by intervening rules of evidence on the ability of parties to produce new proof. The constitutionality of the act presents a subject of discussion which has already been exhausted. The question of its consistency with the constitution of the State was put at rest by the decision in Barnet vs. Barnet, already cited, and Tate vs. Stoolsfoos, 16 S. and R. 35; nor would we have suffered it to be argued as regards the constitution of the United States were it not intimated that the object of raising the point here, is to submit it to the decision of the court of the last resort. Were it at all a doubtful one, we would esteem it a release from responsibility to remit the final determination of it to our superiors; and even viewing it as free from difficulty, it is as consolatory to the court, as it can be to the suitor, to know that he is entitled to the benefit of an appeal to a tribunal whose legitimate province it is to enforce the rights secured to the citizen by the national compact. I am not one of those who perceive a constitutional blemish in every statute which impinges on existing rights, and who hold that the enactment of such a statute is necessarily in contravention of the inherent principles of a written constitution. Retrospective laws are doubtless unjust in theory, and indefensible in practice, when they are not employed as a corrective of mischief; but when the rights they are intended to affect are not guarded by a specific prohibition, the question of morality, as well as policy, is for the determination of the legislature. Our inquiry then is a simple one: what are the specific limitations of State legislation imposed by the constitution of the United States? They are all contained in the 10th sect. of 1st art., and but two of them, the inhibition of ex post facto laws, and the inhibition of laws impairing the obligation of contracts, can be made to operate on the subject of the present controversy even by the most strained construction. Ex post facto laws are necessarily retrospective: they act on existing rights, or they do not act at all. Yet the converse does not equally hold; for it seems to be universally conceded, since the decision in Calder vs. Bull, 3 Dall. 386, that retrospective laws are not necessarily within the intent and meaning of the constitution. In that case, it was determined that the prohibition is applicable exclusively to penal laws; for instance, such as would impart a degree of criminality to an act that was indifferent at the time, or increase the grade of an offence already committed, or deprive a person of a privilege or an advantage in relation to the course of the trial on the measure of the proof. These are plainly forbidden. But in matters of civil jurisprudence, statutes, simply retrospective, have not been disregarded by the courts, but for disobedience of some other plain, palpable, and positive mandate of the constitution. This was distinctly asserted by Mr. Justice Washington in delivering the opinion of the court in Satterlee vs. Mathewson, 2 Peters, 411, and shown to be entirely consistent with decisions that had been thought to bear the other way. In Calder vs. Bull, a distinction was expressly taken between ex post facto and retrospective laws: the prohibition

of the former being protective of the person from retroactive punishment; the security of property being provided for in the clauses which forbid a tender to be made in any thing but coin, or the obligation of a contract to be impaired. These clauses, it was justly remarked, would be redundant, were the prohibition of ex post facto laws so largely construed as to extend it to the protection of both property and person. But taking it to be otherwise, the law in question carries with it no actual pretension of power to interfere with vested rights. The act of 1770, authorized the magistrate to make the separate examination, but omitted to provide a mode or form of authentication to perpetuate the evidence of the fact. The practice has been to take the magistrate's certificate; and this court had thought itself bound by analogies from the case of a fine, to require the essential parts of the transaction to be particularly set out, in default of which it was held, not that the conveyance was void, but that the grantee had failed in the proof of its execution. By interfering with the existing decisions, then, so far as to declare a certificate of the naked fact of acknowledgment to import a compliance with all the requisitions of the law, the legislature undertook to deal not with the contract, but with the evidence of it. In what, then, had the party to be affected a vested right? If in nothing but the quality and effect of the evidence, his right was possessed of no peculiar sanctity. A statute to dispense with the rule which requires subscribing witnesses to be called, could not be said to affect a right, even so far as to incline a court towards a construction favorable to an exemption from its operation, of instruments in existence at the time of its enactment. It might be otherwise where attestation by subscribing witnesses had been an essential part of the act of execution, as in the case of a will of land under the statute of frauds. Here, however, a specification of the particulars was no part either of the acknowledgment or of the separate examination, but a formal measure of proof exacted, not by the legislature, but the courts, and in substituting a different one, the legislature dispensed with no part of the title, acknowledgment, or examination, either in substance or in form, but in accordance with the common law maxim, *omnia rite presumuntur*, declared the certificate of the naked fact to be at least prima facie evidence of every thing necessary to constitute the fact. I take it, then, that the supplemental act divests no right, and that it would not be unconstitutional if it did.—Most of the preceding remarks are applicable to another branch of the argument, whose object has been to show the act to be in derogation of the contract. I pass without remark the notion that it would impair the patent, which is certainly in no less force than it ever was, to pass the title from the State. If any contract is impaired, it must be the conveyance which is the immediate subject of the law. That it operates not on the title, but on the evidence, I have attempted to show; and even if without success, yet another ground of support to the law remains, which it seems to me cannot be shaken; its effect is not to impair the contract, but affirm it. That it is one thing to destroy a contract and another to establish it, was determined in Hess vs. Werts, 4 S. and R. 356, in which a statute passed in maintenance of an action on the notes of certain unchartered banks was held available, though the effect of it had been to set up a contract, which had been expressly declared illegal and void. And in Satterlee vs. Mathewson, 16 S. and R. 169, an illegal lease was validated by a statute, which was held to be constitutional, though operating on a case already determined, and so far as

entirely to change the principle of adjudication. I rely on that decision with peculiar confidence, not only because it is in all respects what the argument has assumed the case at bar to be, but because it has been affirmed in all its bearings by the Supreme Court of the United States, where the distinction between the destruction of a contract and the establishment of it was taken and sustained. Even Mr Justice Johnson, who dissented as to that, concurred in asserting the competency of the Legislature to declare the law retrospectively, so as to revise and overrule the decisions of the judiciary; a principle broad enough to cover the whole field of the argument. After a decision of the very point, in terms so positive and emphatic, by the court of the last resort, it is idle to pursue the inquiry; and I dismiss it to turn to matters of domestic and exclusive jurisdiction. The subject of the next exception is the record, a writ of error *coram vobis*, which has been returned with the record of the ejectment, but which is perhaps not judicially before us. A writ of error is an original commission to inspect a distinct and separate record, the proceedings in pursuance of which are not proceedings in the original action, or like a scire facias, to have execution of the judgment, a continuation of them. Here not only are there two distinct records and two distinct judgments to be affirmed or reversed, but the second does not answer the description of any record to be removed, the position of the parties being reversed. Doubtless two or more records may be removed by the same writ, but then the number should be specified, and they ought to be described as they actually exist. The objects here, however, being to have the opinion of the court on all the points, we proceed to the assignment as if the record were incontestibly before us. Nothing can be more purely technical than the points contained in it. That the supposed clerical slip in recording the defdts'. appearance deprived them of any protection or advantage they would otherwise have had in making their defence, is not pretended, and the exception is, therefore, entitled to no peculiar favor. In the application of rules of practice, respect is to be had not only to the inadvertent habits of the profession, but the experience of the prothonotaries, which frequently compel us to dispense with strictness of form to preserve the substance of justice. Our records are seldom put into form, and the evidence of our judicial proceedings is suffered to rest in minutes or short entries, which are in truth but the material from which a perfect record might be made up. Here the only evidence that the defdts. appeared at all, is the customary entry of the names of counsel in the margin of the docket, by which, however, the prothonotary would have been authorized so to make up the record for return to the writ of error *coram vobis*, as to show the truth of the fact, that the infant defdts. had actually appeared and made defence by their guardian and co-defdt; or the defect being a clerical one, might have been amended even after error brought. Even as the case stood on the record, the memorandum of an appearance, like the memorandum of a judgment, being taken to import what it would be if drawn out in form, the pltff., instead of pleading specially to the assignment, might have put the truth of it in issue. Instead, however, of having recourse to the record for its substance and effect, he has put his own case on the facts contained in his special plea. It is unnecessary to go into a particular examination of the principles they involve, as that has been done in an accurate and satisfactory manner by the judge who ruled the cause below, it being sufficient to say that the conclusion at which he arrived is sustained

both by reason and authority. The case of Priest vs. Hamilton, 2 Tyler 44, is in every particular the case before us. The remaining errors require but a passing notice. It is impossible to discover a reason why no verdict should have been given in favor of the surviving plff.; and none has been pointed out by the counsel. As to the notion that a verdict, though set aside, may be available to constitute a title under the act, which declares two verdicts in favor of the same party to be conclusive, it is sufficient to say that each must have been confirmed by a judgment, else two verdicts in the same action, though set aside for misdirection, would have the preposterous effect of constituting an independent title at the third trial. It has also been urged that the plffs. in error have acquired title by the statute of limitations; no part of the evidence is on our paper books, and we intimate no opinion on the subject, nor could we, in any event, decide what was not the subject of adjudication below. A writ of error removes not the whole cause in order to subject it to revision on the merits; but a particular point decided by the court, and made a specific ground of exception by the party. It is admitted that no exception, or even defence, was taken on this ground; and we are, therefore, not to reverse for a decision never made, or an error not committed.

The judgment of the district court is affirmed.

This opinion was excepted to, and filed at the request of counsel.

JOHN B. GIBSON.

(Copy.)

Know all men by these presents, that we, David Watson and Joel Baker, both of Leacock township, Lancaster county, and Commonwealth of Pennsylvania, are held and firmly bound unto John Mercer and Margaret Mercer in the full and just sum of two hundred dollars, to be paid to the said John Mercer and Margaret Mercer, their certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this day of , in the year of our Lord one thousand eight hundred and thirty-two.

Whereas, lately, at a Supreme Court of Pennsylvania for the Lancaster district, in a suit depending in said Supreme Court between Jane Watson, Patterson Watson, David Watson, Samuel Smoker, and Sarah his wife, Maria Watson, Hetty Watson, and Jane Watson, plaintiffs in error, and John Mercer and Margaret Mercer, defendants in error, judgment was rendered against the said Jane Watson, Patterson Watson, David Watson, Samuel Smoker, and Sarah his wife, Maria Watson, Hetty Watson, and Jane Watson, and the said Jane Watson and others having obtained a writ of error, and filed a copy thereof in the clerk's office of the said Supreme Court to reverse the judgment in the aforesaid suit, and a citation directed to the said John Mercer and Margaret Mercer, citing and admonishing to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of January next.

Now, the condition of the above obligation is such, that, if the said Jane Watson, Patterson Watson, David Watson, Samuel Smoker, and Sarah his wife, Maria Watson, Hetty Watson, and Jane Watson, plaintiffs in error as

aforesaid, shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

DAVID WATSON. [SEAL.]
JOEL BAKER. [SEAL.]

Sealed and delivered in the presence of—

JOHN R. MONTGOMERY.
H. G. LONG.

Approved by the court, Nov. 30, 1832.
Attest, H. G. LONG, *for Proth'y.*

UNITED STATES OF AMERICA.

To John Mercer and Margaret Mercer, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of Pennsylvania for the Lancaster district, wherein Jane Watson, Patterson Watson, David Watson, Samuel Smoker, and Sarah his wife, Maria Watson, Hetty Watson, and Jane Watson, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why judgment rendered against the said Jane Watson, Patterson Watson, David Watson, Samuel Smoker and Sarah his wife, Maria Watson, Hetty Watson, and Jane Watson, as in their said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable

JOHN B. GIBSON,
C. J. Sup. Ct. Penna.

The above filed Nov. 30th, 1832, in the Supreme Court of the Commonwealth of Pennsylvania for the Lancaster district.

Attest, H. G. LONG, *for Proth'y.*

On this fifteenth day of December, in the year of our Lord eighteen hundred and thirty-two, personally appeared H. M. Watts, before the subscriber, the Mayor of the city of Pittsburgh, in the State of Penna, and makes oath that he delivered a true copy of the within citation to Mr. John Mercer, on the day of the date of this deposition.

H. M. WATTS.

Sworn and subscribed before me, the Mayor as aforesaid,

SAMUEL PETTIGREW,
Mayor city of Pittsburgh.

The above filed in the office of the prothy. of the Supreme Court for the Commonwealth of Pennsylvania for the Lancaster district, Decr. 20th, 1832.

Attest, H. G. LONG, *for Proth'y.*

UNITED STATES OF AMERICA.

The President of the United States to the Judges of the Supreme Court of Pennsylvania for the Lancaster district, being the highest court of law or equity of said State of Pennsylvania, greeting:

[SEAL.] Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Pennsylvania for the Lancaster district, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Jane Watson, Patterson Watson, David Watson, Samuel Smoker, and Sarah his wife, Maria Watson, Hetty Watson, and Jane Watson, plaintiffs in error, and John Mercer, and Margaret Mercer, defendants in error, wherein is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a State of, or an authority exercised under, said State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision is in favor of such their validity, or where is drawn in question the construction of any clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision is against the title, right, privilege, or exemption specially set up or claimed by either party, under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of the said Jane Watson, Patterson Watson, David Watson, Samuel Smoker and Sarah his wife, Maria Watson, Hetty Watson, and Jane Watson, plaintiffs in error as aforesaid, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, so that you have the same, together with this writ, at Washington, on the second Monday of January next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness, the honorable John Marshall, Chief Justice of the said Supreme Court of the United States, the first Monday of August, in the year of our Lord one thousand eight hundred and thirty-two.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Allowed by JOHN B. GIBSON,
C. J. Sup. Ct. Penna.

Filed in the Supreme Court of the Commonwealth of Penna. for the Lancaster district, Dec. 10, 1832.

Attest, H. G. LONG, *for Prothy.*

COMMONWEALTH OF PENNSYLVANIA, *Lancaster district, ss.*

I, John K. Findlay, Prothonotary of the Supreme Court of the Commonwealth of Pennsylvania, in and for the Lancaster district, do hereby certify that the writings annexed to this certificate are true copies of the record and all proceedings had in the cause in the annexed writ of error mentioned, and now on file, and remaining of record in my office.

[SEAL.] In testimony whereof, I have set my hand, and caused the seal of the said court to be hereunto affixed, in pursuance of the directions of the said writ of error, at the city of Lancaster, in the Lancaster district of the Commonwealth of Pennsylvania, this 29th day of July, A. D. 1833, and of the independence of the United States the fifty-eighth.

JNO. K. FINDLAY,
Prothonotary of the Lancaster district of the Supreme Court.

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